

Affirmatively Furthering Fair Housing In Waltham

Introduction

Waltham needs more permanent affordable housing to meet the demands of the coming decade. During 2020, the City Council's Ad-hoc Committee on Housing studied and recommended solutions to address the city's housing situation.

[The full report of the Ad-hoc Affordable Housing Committee Report available on line at City of Waltham Website link: www.city.waltham.ma.us/sites/g/files/vyh1if1386/f/uploads/housing_report_final.pdf]

The City must now expand on its considerable housing efforts to develop a long-term plan utilizing multiple strategies to achieve effective policy that address housing issues now and into the future. The City needs a two-part strategy with one part meeting the current housing emergency caused by the general shortage of affordable housing and the eviction risks caused by the COVID-19 pandemic and the other part providing permanent affordable housing.

To achieve these goals Waltham needs to:

- increase funding resources to meet current housing needs and new initiatives.
- use city ordinances to require large developers to incorporate racially and economically diverse neighborhood planning in their projects.
- address rising costs of home ownership that make it harder for seniors to maintain residences in the city.
- increase stock of affordable senior housing available.
- remove current zoning restrictions that inhibit Waltham's ability to create more affordable housing, specifically: the Fernald property; the Governor's Housing Choice Initiative and accessory housing.
- create more permanent affordable apartments by permitting accessory apartments.
- bring the many "illegal" apartments in the city into conformance with ordinances. They are often unsafe because they are not inspected and up to building code standards.
- seek to secure available grants to MBTA communities for multi-family housing.

Affirmatively Furthering Fair Housing [AFFH] In Waltham Is Part of the Solution

*[Background: In 1968, President Johnson signed the Fair Housing Act making housing discrimination on the basis of race, color, national origin, religion, sex, family status, or disability illegal. In 2015, President Obama strengthened the Fair Housing Act by issuing the Affirmatively Furthering Fair Housing (AFFH) rule, which required cities to examine whether there are any barriers to fair housing, produce an Assessment of Fair Housing, and create a plan to rectify fair housing practices. The Trump Administration repealed the 2015 AFFH rule and dismantled the federal requirement. The City of Boston engaged in a cross departmental effort to draft a plan for **Affirmatively Furthering Fair Housing (AFFH), as required by President Obama's 2015 AFFH rule.** Boston's draft AFFH identifies actions and goals across city agencies, including amending the Zoning Code to affirmatively further fair housing. Parts of the Boston plan are useful to cities like Waltham in developing local Fair Housing action.]*

Affirmatively Furthering Fair Housing (AFFH) means:

- Taking meaningful actions that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.
- Taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity,
- Replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.
- Affirmatively extending fair housing goals to all programs relating to housing and urban development.

Waltham Has Experienced Displacement and Escalating Rental Costs

Luxury apartments increase rental costs in the city and drive people of lesser economic means out of the city.

As of March 5, 2021, the average rent on a studio apartment in Waltham was \$1,519 per month.

The average rent on a one bedroom apartment was \$2,102 per month.

The average rent on a two bedroom apartment was \$2,449 per month.

The average rent on a three bedroom apartment was \$3,031 per month.

*Average Rent in Waltham, MA and Cost Information: www.zumper.com/rent-research/waltham-ma

Amending Waltham Zoning Codes that Inhibit Fair Housing To Increase Affordable Housing

Amending the local Zoning Code would codify Waltham's legal responsibility to affirmatively further fair housing. Through the analysis and intervention measures that the amendment requires, Waltham can more effectively guard against displacement while also creating affordable housing in areas that have historically excluded people. Amending the local zoning code to include fair housing and anti-displacement language is a significant step forward.

The zoning amendment will require developers to take substantial steps to stem displacement and provide further access to housing to those historically discriminated against.

- To reverse the exclusionary housing practices of the past that have kept families of color from accessing safe and secure housing and building generational wealth
- Promote equity and fairness by adopting affirmative fair housing requirements into local zoning code, and asking our developers to do more to fight displacement and create housing for all

Developer Responsibility In Affirmatively Furthering Fair Housing (AFFH) Plan:

Amend the local Zoning Code to require proposed development projects containing over 35 units and/or Planned Development Areas (PDAs) undergoing review to consider impacts on area residents historically discriminated against so that steps can be taken to reduce those impacts, provide new housing opportunities, and address past histories of exclusion.

Developers will be required to complete both an approved [Accessibility Checklist](#), which considers impacts of people with disabilities, in addition to a new AFFH Assessment, guided by a displacement analysis and historical exclusion data that will be provided by local planning department.

In order to achieve the goals of Affirmatively Furthering Fair Housing, projects in impacted areas will be required to take additional steps that could include:

- providing an additional percentage of Inclusionary Development Policy (IDP) units than required,
- deepen the affordability of IDP units,
- provide additional accessible units,
- provide a higher proportion of family-sized (2+ bedroom) IDP units,
- provide all IDP units on-site,
- match the percentage of family-sized units in the surrounding neighborhood or any other option that meets the AFFH goals.

Projects will also be required to market IDP units in accordance with an Affirmative Fair Housing Marketing plan to further access to housing.

Monitoring Implementation

A local Waltham Interagency Fair Housing Development Committee (WIFDC), comprised of representatives from the pertinent local city departments will be created and will meet regularly to review the submitted Assessments and develop a plan for ongoing monitoring of commitments and reporting requirements.

Waltham Interagency Fair Housing Development Committee

The Waltham Interagency Fair Housing Development Committee (“WIFDC”) will be comprised of representatives from the Office of Housing, the Building Department, the Waltham Disability Services Commission (WDSC), the Waltham Planning Department (“WPD”) and the Waltham Housing Authority (“WHA”) for a total of five. The WIFDC shall meet regularly to review the Assessment and Proposal and develop a plan for ongoing monitoring of commitments and reporting requirements for the Proponent and/or successors to be memorialized in Cooperation Agreements and/or PDAs.

Waltham Proposals: Zoning Code and Affirmatively Furthering Fair Housing

Review Procedures and Submittal Requirements

This document outlines the requirements for documentation and measures to be undertaken by a Proposed Project and/or Planned Development Area (Proposed Project) of residential projects or mixed-use projects containing more than 35 residential components to affirmatively further fair housing as well as the role of the Waltham Interagency Fair Housing Development Committee (WIFDC).

WIFDC review occurs in multiple phases which coincide with the Waltham Planning & Housing Department (WPHD) review processes and filing of a Affirmative Fair Housing Marketing Plan: the (1) Initial filings, (2) Cooperation and Affordable Housing Agreements, (3) Affirmative Fair Housing Marketing Plan and (4) Commitments. The following describes each review phase, required documentation, and corresponding review and regulatory actions. All documents must include the project name, address, date, and page numbers. All filings are to be digital with a limited number of hard copies made available.

1. Initial Filing

The following documentation is to be submitted with the first formal submission or a substantive project change including a Project Notification Form (PNF), draft Planned Development Area (PDA) Development Plan, PDA Master Plan or similar project filing.

Documentation

Proponents must include an Affirmatively Furthering Fair Housing (AFFH) component within the initial filing. The following must be a part of this section; all elements are understood to be preliminary: (1) AFFH Component: This section should outline the project's strategies for furthering the goals of overcoming segregation, fostering inclusive communities, addressing significant disparities in housing needs and access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, and transforming racially and ethnically concentrated areas of poverty into areas of opportunity and (2) Assessment Tool: The Assessment Tool is to be completed online with a copy of the Assessment Tool included in the filing. *The WIFDC will not begin its review until a submission is complete.*

WPDA Scoping Session

All relevant key practice areas of the Proponent team should be represented at the Scoping Session. The Proponent should describe its approach to affirmatively furthering fair housing and planned outcomes for the Proposed Project.

WIFDC Review

The WIFDC will review the submitted documents to determine whether the Proposed Project containing more than 35 units will be consistent with the goals outlined herein. The WIFDC will provide comments and may request additional information during the review process. Written comments and requests for additional information will be provided to the Proponent through the WPHD. A final Proposal shall be submitted to the WIFDC prior to and included in WPHD approvals. Commitments made in the Proposal shall be included in WPHA memos and memorialized in at least one of the following documents: Cooperation Agreement and/or in any relevant affordable housing agreement, including, but not limited to an Affordable Housing Agreement, an Affordable Rental Housing Agreement and Restriction, an Affordable Housing Contribution Agreement, or an Off-Site Affordable Housing Agreement.

2. Cooperation and Affordable Housing Agreements

WPDA Board memos and project agreements, including Cooperation and Affordable Housing Agreements shall be made available to the WPHD, the WIFDC, the Building Department, the Affirmative Fair Housing Marketing Program (the "Marketing Program") housed at Building Department, the WPHD, which is responsible for monitoring and enforcing housing agreements and Cooperation Agreements.

3. Affirmative Fair Housing Marketing Plan

The following documents should be submitted to the WPDA Project Manager and the Building Department representative on the WIFDC: Affordable Housing Agreement or an Affordable Rental Housing Agreement and Restriction, acknowledging that income restricted units will have to be marketed in accordance with the policies and procedures established by the City of Waltham's Affirmative Fair Housing Marketing Program, and outlined in an Affirmative Fair Marketing Plan. The Affirmative Fair Housing Marketing Plan (AFHM) should be completed approximately six months prior to lease or sale of any units in the project. Upon the first anniversary of the full building permit, if the developer has not begun the AFHM Plan process, it shall be the responsibility of the WPDA Project

Manager to notify the developer and the Marketing Program. The developer and/or their agent completes the AFHM plan in conjunction with the Marketing Program. This plan is signed by both the Marketing Program and the WPDA.

WIFDC Review

WIFDC staff will review the AFHM before it is signed by the WPDA to determine whether the Proposed Project is consistent with the requirements outlined in the Cooperation Agreement. Any written comments and requests for additional information will be provided to the Proponent through the WPHD and/or Building Department.

4. Commitments

The Proponent shall provide the WIFDC regular updates on the ongoing commitments relative to the AFFH Assessment Component and Proposal (which are to be memorialized in the appropriate AFFH Agreement).

The components in this section are to be reviewed 2 (two) years after adoption.

Affirmatively Furthering Fair Housing Policy and Standards for Recommendations for Approval

The goal of Affirmatively Furthering Fair Housing (“AFFH”) is to meet the City's planning goals for vibrant, resilient neighborhoods by ensuring that development helps to create and preserve places for protected classes to live and thrive. AFFH is defined as taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, AFFH means taking meaningful actions that, taken together, further address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, where residents have reasonable access to amenities (e.g.: healthcare, transit, groceries, banking, green-space), educational opportunities and economic opportunities.

To achieve this goal through the Waltham Zoning Code (“Code”) and Planning Development Review process, project proponents (“Proponent”) of residential projects or mixed-use projects with residential components undergoing Large Project Review and /or Planned Development Area Review pursuant to the Code will be required to complete an AFFH Assessment Tool (“Assessment”) and submit and propose respects (“Proposal”) in which their Proposed Project will contribute to the goal of AFFH, based on the AFFH Interventions Options below.

Recommendations to the WPHD for approval shall be based on the following standards:

- A determination that the Proposed Project and/or PDA meets the affirmatively furthering fair housing standard, with an analysis of how the goals will be met (see Intervention Options below); and/or
- A determination that the advancement of the goal has been met; or
 - o A determination that the Proposed Project and/or PDA will not likely result in the direct involuntary displacement of existing residents who are members of protected classes in the Proposed Project and/or PDA; or

- o A determination that if the Proposed Project and/or PDA does not meet the affirmatively furthering fair housing standards additional measures shall be required.

Intervention Options:

In order to achieve the AFFH goal stated above, the following is a list of AFFH Intervention Options that can be proposed by any Proposed Project and/or PDA.

Proponents must choose a minimum of one option from the Process Options and one option from the Marketing Options:

Process Options:

- Voluntarily provide an additional percentage of IDP units than required
- Voluntarily deepen the affordability of IDP units
- Provide a higher number of accessible units than required
- Voluntarily provide a higher proportion of larger family-sized (2+ bedroom) IDP units
- Provide all IDP units on-site
- Match or exceed the percentage of family-sized units in the surrounding neighborhood
- Increase density in order to increase units available to protected classes
- Agree to host new Project-Based Vouchers (PBV) or Rental Assistance Demonstration (RAD) units or other deeply-affordable units on site, in addition to fulfilling IDP requirements
- Agree to partner with a non-profit developer, land trust, housing authority, or other entity to provide land or bear some capital costs to enable affordable housing construction, in addition to fulfilling IDP requirements
- Any other option(s) that meet the stated goal

Marketing Options:

Preferences for income restricted units must be in accordance with WPDA policies. Any deviation may need to be approved by the Affirmative Fair Housing Marketing Program and/or the Massachusetts Department of Housing and Community Development.

- Provide a preference for an agreed upon percentage of units to rental voucher-holders for the first year or some other term
- Provide preference for an agreed percentage of units to families that are currently rent burdened, have experienced a no-fault eviction, or have experienced eviction but now display ability to pay
- In the case of homeownership units, provide a preference to first-time/generation homebuyer
- Allow last month's rent and security deposit to be paid in installments for an agreed upon percentage of units or by renters up to a certain income level

- Agree to follow best practices related to the use of CORI, eviction, and credit records in the tenant screening and selection process
- Agree to best practices in marketing the market-rate units that are inclusive of and welcoming to protected classes
- Agree to follow progressive practices related to the use of CORI, eviction, and credit records in the tenant screening and selection process, and in marketing of units, for example following Fair Chance Housing guidelines, and/or waiving eviction and credit checks for affordable units, especially housing voucher holders
- Any other option(s) that meet the stated goal.

For Proposed Projects in areas of high displacement risk or high historical exclusion, as determined by the WIFDC, and for PDAs, Proponents must choose a minimum of one option, as applicable:

Intervention Enhancements :

- Areas of High Displacement Risk
 - Diversity preservation Preferences for applicable projects
 - Supplemental Process Option
- Areas of High Historical Exclusion
 - All IDP units should be built on site
 - Supplemental Process Option
- for Planned Development Areas
 - Supplemental Process Option

Supplemental Process Options

- Contribute to the Municipal Housing Trust Fund
- Voluntarily deed tenants the right of first refusal to purchase property upon conversion
- Voluntary subsequent owner transfer fee agreement
- Establish or contribute to a neighborhood housing Acquisition Opportunity Program
- Restrict % of non-owner-occupied units
- Mixed use and local small business long term flexible lease options
- Voluntary “Flipping fee” agreement