

Examining Local Land Use with a Fair Housing Lens:

An Evaluation Tool for Planners, Policy Makers, and Other Practitioners

**Produced by the
Fair Housing Council of Oregon**

www.FHCO.org

Draft for Stakeholder Feedback

Send comments to: acudmore@fhco.org by 12/2/13

How Fair-Housing Friendly Are Your Plans, Codes, and Practices?

Many planners may not be aware of the fair housing implications of land use plans and implementing codes and how they can play an important role in promoting fair access to decent housing—a human necessity and a pathway to accessing other opportunities—for all. Federal fair housing law, first enacted by Congress as Title VIII of the Civil Rights Act of 1968, prohibits discrimination in housing based on race, color, religion, national origin, sex, disability or familial status (the presence of children in the household)-the seven federal protected classes. (Oregon law also prohibits discrimination based on source of income, marital status, sexual orientation, gender identity, and having a history of being a survivor of domestic violence.) The law applies to public entities, private businesses, nonprofits and individuals, and it covers both intentional acts of discrimination and also policies and practices which, on the surface, may not appear discriminatory but, in fact or in practice, have a disparate impact on one or more protected classes. A disparate impact occurs when a policy or action has a negative effect on a higher proportion of members of a protected class than those not in a protected class. Fair housing issues that develop from land use plans, codes and practices most often fall into the category of “disparate impact.”

How to Use This Guide

This checklist is intended to serve as an informational and educational tool for land use planners in Oregon’s cities and counties. It provides a guide to use in auditing your land use plans and implementing codes, including zoning maps, development regulations, building codes and the like. It also suggests clear and straightforward actions that jurisdictions can take to both comply with fair housing law and affirmatively further fair housing through adopting best practices. Jurisdictions that receive federal funds, either directly from the US Department of Housing and Urban Development or other federal agencies, or through the State of Oregon, are required to affirmatively further fair housing.

The items below preceded by the term “Best Practices” indicate actions that your jurisdiction may choose to take to affirmatively further fair housing. Some are likely to be effective in only certain types of communities; these are designated “Best Practices in Appropriate Contexts.” The other actions (ones that are not labeled Best Practices or Best Practices in Appropriate Contexts) are considered essential for every community; they are either required by state law or represent actions that are essential to providing for fair housing choice. Because the law and case history are complex, addressing all of the items on this list does not shield your jurisdiction from all potential fair housing claims or lawsuits, but it does help demonstrate a good faith effort to support fair housing.

A Note on Fair Housing, Affordable Housing and Needed Housing

Fair housing and affordable housing are related, but distinct, concepts. Generally, housing is considered to be affordable when low income households (those whose incomes are at or below 60% of area median income, adjusted for family size, as determined by HUD) spend no more than 30% of their gross income on housing costs, including rent and essential utilities. Many, but by no means all, individuals who are members of protected classes need affordable housing. The degree to which there is an overlap between the population needing access to affordable housing and those who are protected by fair housing law varies from jurisdiction to jurisdiction. While this guide primarily focuses on ways land use plans and implementing codes can support fair housing, it also contains suggestions relevant to supporting the development of affordable housing.

Fair housing and affordable housing also relate to a concept familiar to planners in Oregon: needed housing, defined in ORS 197.303 as “housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels,” including specified housing types, such as attached and detached single-family housing and multiple family housing for both owner and renter occupancy, government-assisted housing, mobile home parks, manufactured homes on individual lots and housing for farmworkers. The buildable lands provision (ORS 197.286) addresses requirements pertaining to land supply for needed housing. Oregon land use law thus helps ensure that comprehensive plans and implementing codes do not preclude the development of affordable housing (exclusionary zoning), but it does not ensure that affordable housing will actually get built. Some of the topics covered in the second section of this checklist suggest ways that local codes can include additional provisions to support the development of affordable housing.

The needed housing analysis required of Oregon municipalities provides an opportunity to affirmatively further fair housing. Jurisdictions may elect to define certain housing types (e.g., group homes) as needed housing. ORS 197.307 requires that, once a need for a particular housing type has been established, that housing type must be a permitted use in one or more zoning districts with sufficient buildable land to satisfy that need, and that only clear and objective standards, conditions and procedures that do not discourage development of the housing through unreasonable cost or delay may be applied.

Looking for More Information?

This guide is intended to serve as a starting point; we hope it provokes questions about specific provisions in your codes or statements in your plans. The Fair Housing Council of Oregon welcomes your questions. We are available to provide confidential technical assistance to assist jurisdictions with making their codes fair-housing friendly. We encourage you to contact us at (503) 223-8197 or acudmore@fhco.org

Check if you've got this covered or it is not applicable	Topic	Protected Class	Requirements or Best Practices
Provisions specific to protected classes and fair housing			
Code Definitions			
	Definition of <i>disability</i>	Disabilities	If <i>disability</i> is defined in your code, it, at a minimum, must include all those included in the definition in the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended). Persons with disabilities are defined as individuals with mental or physical impairments which substantially limit one or more major life activities. (This definition is a much broader interpretation of disability than is generally used on other applications.) [http://www.justice.gov/crt/about/hce/final8_1.php]
	Definition of <i>family</i>	Disabilities, national origin, color, race, familial status	A local government may restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. One way to do this is through defining the term <i>family</i> . However, if <i>family</i> is defined in local code, it must not have the effect of discriminating against unrelated individuals with disabilities residing together in a group living arrangement [http://www.justice.gov/crt/about/hce/final8_1.php] or larger extended families who wish to reside together. Because this definition is typically central to other topics covered in your code, we suggest that you contact the Fair Housing Council of Oregon if you have any questions or concerns about this definition or how it plays out throughout your code.
	Definitions of <i>Special Residences</i>	Disabilities	<p>Definitions of “group homes” and “treatment facilities” (or other similar terms) must, at a minimum, comply with the definitions of <i>Residential Homes and Facilities</i> found in Special Residence provisions of ORS 197.</p> <p><i>Residential homes</i> include:</p> <ul style="list-style-type: none"> • <i>Residential treatment homes</i>, which are facilities that provide residential care and treatment for five or fewer individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence. [ORS 443.400] They are licensed by the Oregon Health Authority. [ORS 443.410] • <i>Residential training homes</i>, which are facilities that provide residential care

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			<p>and training for five or fewer individuals with mental retardation or other developmental disabilities. They are licensed by Oregon Department of Human Services.[ORS 443.400]</p> <ul style="list-style-type: none"> • <i>Adult foster homes</i>, which are family homes or facilities in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage. They are licensed by either Oregon Department of Human Services or the Oregon Health Authority [ORS 443.705] <p><i>Residential facilities</i> include:</p> <ul style="list-style-type: none"> • <i>Residential care facilities</i>, which are facilities that provide residential care in one or more buildings on contiguous properties for six or more socially dependent individuals or individuals with physical disabilities. [ORS 443.400] Licensed by Department of Human Services. [ORS 443.410] • <i>Residential training facilities</i>, which are facilities that provide residential care and training in one or more buildings on contiguous properties for six or more individuals with mental retardation or other developmental disabilities.[ORS 443.400] Licensed by Department of Human Services. [ORS 443.410] • <i>Residential treatment facilities</i>, which are facilities that provide residential care and treatment in one or more buildings on contiguous properties for six or more individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence. [ORS 443.400] Licensed by Oregon Health Authority. [ORS 443.410]
Code and Mapping Allowances			
	Zoning for licensed residential facilities	Disabilities	Licensed residential facilities (see above Definitions of Special Residences--your code may have a different name for this use) must be a permitted use in any zone where multifamily housing is a permitted use [ORS 197.667] and licensed residential facilities must be a permitted or conditional use in any zone where multifamily housing is a conditional use. [ORS 197.667]

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			<ul style="list-style-type: none"> • Your code must not impose use restrictions on residential facilities that are not imposed on multifamily housing. • Your code must not impose notice criteria on residential facilities that are not required for multifamily housing. • Your code must not impose restrictions or standards on residential facilities based on the degree to which the residents are disabled. • Your code must not impose design requirements on residential facilities that it does not impose on other multifamily housing. • Your code must not impose siting criteria (e.g., no residential facilities within 1000 feet of each other) that it does not impose on other multifamily housing. Note: This may be permissible if there is a current and real concern that residential facilities are segregated in a certain area, separate from the general population AND there is no other way to achieve integration. • Your code must not impose impact or permit fees on residential facilities that it does not impose on other multifamily housing.
	Zoning for licensed residential facilities	Disabilities	<p>Licensed residential facilities (see above Definitions of Special Residences--your code may have a different name for this use) must be a permitted use in any zone where multifamily housing is a permitted use [ORS 197.667] and licensed residential facilities must be a permitted or conditional use in any zone where multifamily housing is a conditional use. [ORS 197.667]</p> <ul style="list-style-type: none"> • Your code must not impose use restrictions on residential facilities that are not imposed on multifamily housing. • Your code must not impose notice criteria on residential facilities that are not required for multifamily housing. • Your code must not impose restrictions or standards on residential facilities based on the degree to which the residents are disabled. • Your code must not impose design requirements on residential facilities that it does not impose on other multifamily housing. • Your code must not impose siting criteria (e.g., no residential facilities within

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			<p>1000 feet of each other) that it does not impose on other multifamily housing. Note: This may be permissible if there is a current and real concern that residential facilities are segregated in a certain area, separate from the general population AND there is no other way to achieve integration.</p> <ul style="list-style-type: none"> Your code must not impose impact fees on residential facilities that it does not impose on other multifamily housing.
	Zoning for unlicensed group homes, group living, shared living quarters, or community service uses	Disabilities, national origin	<p>There are many different types of and names for groups of unrelated individuals voluntarily living together, with or without services and with or without third-party involvement in their lives, such as Oxford Houses for recovering addicts and group homes for adults with disabilities. This use can be a “hot button” issue for neighbors and neighborhood associations and thus become a highly-charged planning issue. However, this use, and how it is treated in codes, is also a grey area with significant potential fair housing ramifications. The case law is evolving and can be context-specific. If this is a concern in your area, we suggest that you contact the Fair Housing Council of Oregon for technical assistance.</p>
	Zoning for onsite services	Disabilities	<p>Alicensed residential facility with onsite services available to both residents and nonresidents of the facility should be a permitted use in commercial zones or mixed use zones that allow commercial uses. There must be sufficient developable land or available sites to accommodate this use.</p>
	Parking requirements for <i>Special Residences</i> or housing typically occupied by persons with disabilities	Disabilities	<p>[Best Practice] Your code should have clear and objective standards defining when parking standards may be adjusted based on the proximity of the development to transit or the likelihood that residents will not own personal vehicles.</p> <ul style="list-style-type: none"> If special residences are determined to be needed housing, then clear and objective standards must be provided in the code. If a variance/adjustment is required, the cost and review process should not have the effect of discouraging applications. <ul style="list-style-type: none"> If a variance/adjustment is required, the cost or review process involved should not be significantly greater than clear and objective review (e.g., fees, engineering study, and extent of discretionary

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			<p>review).</p> <ul style="list-style-type: none"> ○ The additional information obtained from the applicant should be of sufficient benefit to warrant this additional step.
	Accessibility code standards for multi-family dwellings	Disabilities	<p>During plan review, planning or building staff must review plans to ensure compliance with accessibility requirements pertaining to accessible entrances, accessible routes and accessible common and public use areas in multifamily dwellings containing four or more units that were built after March 13, 1991. [Note: building staff must also inspect for usable doors, location of controls, accessible routes into and through units, reinforced bathroom walls, and usable kitchens and bathrooms.]</p> <p>Your codes must include provisions that mirror those in state building code that address the seven Fair Housing safe harbor accessible design and construction standards for multifamily dwellings containing four or more units that were built after March 13, 1991. [The standards can be found at Fair Housing First: http://www.fairhousingfirst.org/fairhousing/requirements.html]</p>
	Occupancy standards	National origin, color, race, familial status	Your code may not contain occupancy standards (residents per bedroom, square footage requirements per resident) that exceed the minimum life and safety standards established by fire or other applicable codes.
	Reasonable accommodation	Disabilities	<p>Your code should enable applicants developing housing for persons with disabilities to request a reasonable accommodation to existing code requirements to better serve that population. The cost associated with making that request, if any, should not have the effect of discouraging it. Examples of potential requests include:</p> <ul style="list-style-type: none"> • Adjustments to maximum parking restrictions to accommodate parking for caregivers • Adjustments to design standards requiring balconies or outside spaces for each individual unit when that feature is detrimental to the wellbeing of the residents (e.g., certain groups of people with mental health disabilities)

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			<ul style="list-style-type: none"> Adjustments to requirements for cooking facilities in each unit when that feature is detrimental to the wellbeing of the residents (e.g., people with dementia)
Fair Housing Knowledge/Training			
	Staff training	All protected classes	<p>[Best practice] Planning, permitting, and building staff should be informed about fair housing.</p> <ul style="list-style-type: none"> They should know where to refer clients for further information about applicable Fair Housing laws, regulations and best practices. They should know where to refer individuals for assistance who believe that they may have experienced discrimination. Contact the Fair Housing Council of Oregon for training information
Availability of Planning Services			
	Planning services	Persons with disabilities, national origin	<p>Planning services must be fully available to all without respect to ability/disability and national origin. Either the facility where development and permit facilities are usually provided must be accessible, or the jurisdiction must have an alternative location where those services can be delivered, should the need arise.</p> <ul style="list-style-type: none"> Planning services must be available to those with mobility, auditory, vision or other disabilities. Planning services must be available in other languages, if necessary.
Provisions that may benefit all protected classes if, in your jurisdiction, most households who are members of specific protected classes also require affordable housing.			
Adequate Developable Land Supply			
	Continuing review of needed housing	All protected classes	<p>You continually review your housing needs analysis and track how developable residential land is being built out, to ensure that sufficient housing is being built that meets the needs of the full range of current and future residents and that sufficient and appropriately-zoned land is available for needed housing. [Goal 10, OAR 660.015, ORS 197.303]</p>
	Minimum lot size and affordability	All protected classes	<p>Your code must not impose a minimum lot size that has the effect of pricing-out lower-cost housing. Your minimum lot size should not unnecessarily constrain the</p>

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			number of housing units that can be constructed on buildable land.
	Setbacks and affordability	All protected classes	Your code must not impose setback requirements that either have the effect of pricing-out lower-cost housing or otherwise constrain the supply of housing that can be used for the development of lower-cost housing.
	Minimum parking requirements and affordability	All protected classes	Minimum parking requirements per dwelling unit of attached and/or multifamily housing should not be greater than those required of detached single family housing, thereby increasing financial burden on affordable housing types.
	Manufactured housing and mobile homes standards	All protected classes	<p>Your code must allow manufactured housing as follows:</p> <ul style="list-style-type: none"> • Your code must allow manufactured housing that meets certain standards for minimum size, appearance and energy efficiency as permitted uses in single family zones (with the exception of historic districts and lots adjacent to historic districts). [ORS 197.312 through ORS 197.314] • Your code must allow manufactured housing subdivisions in single family zones. <p>Your code must allow mobile or manufactured dwelling parks in zoning districts that allow 6 to 12 dwelling units per acre. Your code must establish only clear and objective standards for the manufactured dwelling parks. Your code may not establish a minimum lot size of less than one acre for the manufactured dwelling park, [ORS 197.303, 197.314 and 197.475 through ORS 197.492]</p>
	Duplexes and affordability	All protected classes	[Best practice in appropriate contexts] Your jurisdiction might consider allowing duplexes on corner lots in single family zones as a means to encourage the development of affordable housing.
	Small lot development and affordable land supply	All protected classes	[Best practice in appropriate contexts] Your code could allow for the development of existing substandard lots (lots of record) as a means to increase the supply of affordable land available for residential development.
	Flag lots and affordable land	All protected classes	[Best practice in appropriate contexts] Your code could allow development on flag lots as a means to increase the supply of land available for residential development.

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	supply		
	Alley-accessed lots and affordable land supply	All protected classes	[Best practices in appropriate contexts] Your code could allow the development of housing units that are accessed solely from alleys as a means to increase the supply of land available for residential development.
	Row houses & attached houses and affordability	All protected classes	[Best practice in appropriate contexts] Your code could allow for the development of row houses and/or attached townhouses in single family zones as a means to encourage the development of affordable housing.
	Single-room occupancy units and affordability	All protected classes	[Best practice in appropriate contexts] Your code could allow for single room occupancy units, residential hotels or rooming houses as a way to increase the supply of smaller affordable housing units. <ul style="list-style-type: none"> Existing hotels/motels could be allowed to be converted to single room occupancy units.
	Accessory dwelling units and affordability	All protected classes	[Best practice in appropriate contexts] Your code could allow the development of accessory dwelling units on single family lots as a means to increase the supply of affordable housing.
	Minimum density requirement in multifamily zones	All protected classes	[Best practice in appropriate contexts] Your code could include minimum density requirements in multifamily zones as a way to increase the supply of affordable housing.
	Homeless camping provisions	All protected classes	[Best practice in appropriate contexts] Your code may accommodate homeless camping on up to two parcels [ORS 446.265], on land owned by faith-based organizations [US Religious Land Use and Institutionalized Persons Act of 2000] or as homeless overnight street parking in appropriate places, such as industrial zones.
Zoning and Financial Incentives			
	Density bonus for affordable housing	All protected classes	[Best practice in appropriate contexts] Your jurisdiction could have a density bonus for affordable housing in single family zones as a means to encourage the development of affordable housing. <ul style="list-style-type: none"> Provision could address the number of allowed units, additional floor area ratio, site arrangement /set back standards, and/or height increase.

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	Planned unit developments, cluster subdivisions	All protected classes	[Best practice in appropriate contexts] Your code could include provisions that permit planned unit developments and/or cluster subdivisions as a means to encourage the development of affordable housing.
	Skinny streets and affordability	All protected classes	[Best practice in appropriate contexts] Your code could allow for the use of skinny streets or other alternative, lower-cost street standards as a way to reduce overall development costs.
	Urban Renewal District affordable housing incentives	All protected classes	[Best practice in appropriate contexts] If your jurisdiction has urban renewal districts, you could have standards regarding the share of affordable and/or accessible housing that must be provided for a private project to access public incentives.
	Using surplus public land for affordable housing	All protected classes	[Best practice] Your jurisdiction could have policies and practices in place to identify surplus public land or tax-foreclosed property and convey it to nonprofit organizations for affordable housing development.
	CCRs and protection of affordable housing	All protected classes	[Best practice] Your code could prohibit CCRs that impact the availability of affordable housing, such as CCRs that prohibit the leasing of a unit once it is built.
Permitting and Fees			
	Expedited Review for affordable housing	All protected classes	[Best practice] Your jurisdiction could have processes for expediting the development review of affordable housing.
	Financing system development charges & fees for affordable housing	All protected classes	<p>[Best practice] Your jurisdiction could have a method of financing the cost of system development charges (SDCs) and/or permit fees for affordable housing.</p> <ul style="list-style-type: none"> • If your jurisdiction demands that its lien be in first position, this may render this option unfeasible for publicly subsidized housing units.
	Demolition permits and encouraging relocation of structures for affordable housing	All protected classes	[Best practice in appropriate contexts] Your code may require that property owners applying for demolition permits be notified that nonprofit organizations may be willing to accept donations of the improvement as an alternative to demolition.

Sources

- John VanLandingham. *Removal of Regulatory Barriers*. Fair Housing Council of Oregon website: <http://www.fhco.org/regbarriers.htm>
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