



A few issues the Fair Housing Council is seeing in Oregon so far this year and wants you to know about

10/16/2013

1. Group Homes, Affordable Housing and Zoning

a. *Overly restrictive occupancy guidelines or density guidelines in zoning codes and development codes*

- i. Example: A jurisdiction's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance disallows a group home for six or fewer with disabilities in a certain district or requires this home to seek a conditional use permit, such requirements would conflict with the Fair Housing Act.
- ii. Example: Lake Oswego currently permits a maximum density of 5.5 dwelling units per net buildable acre within their UGB, which is far below the statewide standard of 10 dwelling units. While maintaining a low growth rate, regulatory barriers to housing choice like this one have kept housing prices high with the effect of excluding a disproportionate number of minorities. Thus Lake Oswego's land use/zoning policies act as discriminatory regulatory barriers to the development of housing opportunities to our current Latino population, which in general have lower household incomes than the average household in Oregon and therefore have greater difficulty obtaining housing they can afford.

b. *NIMBYism around group homes:*

- i. Example: A jurisdiction reduces its occupancy standards, prohibits residential facilities in specific residential zones that used to allow them, and requires group homes to go through a new reasonable accommodation process which was not previously required. This is the result of pushback from the community about individuals likely to be living in the group homes. This may have a disparate impact both on the immigrant community (who may have larger families and/or the community of individuals with disabilities).
- ii. Example: A city or jurisdiction requires a group home to go through a conditional use permit process. The permit process mandates the group home provider go before the city council and open the project up for public comment. Other single-family residential homes are not required to go through the same process. This creates more barriers for people with disabilities and could be a violation of the Fair Housing Act.

2. NIMBYism around affordable housing placement

- a. Affordable housing developers and providers have difficulties in all areas of the State siting affordable housing.
- b. Increased NIMBYism around "bringing in that kind of people"; "too much crime"; "abusers of domestic violence victims will come to the property"; "too much traffic"; "gang violence"; "too many children and the schools/parks/neighborhood do not have the capacity"; "parking concerns"; etc. makes it very difficult for developers to find locations to site affordable housing developments without extensive community pushback.
- c. City council members and other development boards make decisions about the number of units included in the project, placement of projects, or approval of projects based on the input from neighbors at community meetings. As a result developers must carve out a significant percentage of their budget just to combat NIMBYism, especially in high-income areas of the state.

- d. Denial of affordable housing projects or placing extensive restrictions on these properties may violate the fair housing law. Affordable housing serves disproportionately high numbers of people with disabilities, single mothers with children, families with children, people of color, and members of other protected class groups. This is a statewide issue.
3. **Inclusionary Zoning Ban in the state of Oregon**
- a. Current state law does not allow jurisdictions to require inclusionary zoning within their municipalities. Inclusionary zoning refers to municipal and county planning ordinances that require a given share of new construction to be affordable by people with low to moderate incomes and helps provide a wider range of housing options than a free market provides on its own.
 - b. There are methods jurisdictions can utilize to circumvent the ban including:
 - i. provide tax incentives only when a multifamily complex guarantees low-income set-aside units that will be permanently affordable and other voluntary inclusionary zoning policies will be included;
 - ii. create an “affordable housing bank” (each time new land is annexed and added to the urban growth boundary, the funding that would normally be allocated to affordable housing in the outer lying areas of the city could be used in certain other areas of the city that would be closer to resources, schools, and amenities);
 - iii. create a transferable development credits program for affordable housing;
 - iv. adoption of zoning regulations mandating mixed-use buildings (this will ensure residents have the opportunity to be near services and business and the amount of available housing continues to increase. Mixed-use buildings could also be a way to encourage employer-assisted affordable housing);
 - v. provide density bonuses;
 - vi. provide expedited permitting processes for affordable housing projects;
 - vii. implement a “no net loss affordable housing policy” to be applied to the amendments of the comprehensive plan;
 - viii. create policies to accommodate the housing needs of the elderly, disabled, immigrant communities, large families and other nontraditional families;
 - ix. create policies to ensure that parking requirements do not discourage the provision of affordable housing;
4. **Criminal history and fair housing**
- a. Criminal history is not a protected class in the state of Oregon, and housing providers can deny someone based solely on their criminal history. African Americans are more than five times as likely to be incarcerated in Oregon’s state prison system as Whites. Despite having one of the smallest Black populations in the country, Oregon ranks 13th highest in the country for its number of African Americans in prison per capita. Blanket “no criminal history” screening criteria has a disproportionate impact on Blacks and other communities of color.
5. **Affirmative Fair Housing Marketing Plans:**
- a. Housing providers (that receive HUD funding for affordable housing development) are not all aware of how to best affirmatively market to specific populations, and as a result, many affirmative marketing plans are not being implemented effectively.
 - b. A few issues housing providers have voiced:
 - i. If an affordable complex is being built in “a high density Latino” census tract, must it affirmatively market for non-Latino for the marketing plan?
 - ii. If an affirmative marketing plan is overly selective (ie: “Anti-Displacement housing”) will this violate the Fair Housing Act?
6. **No Cause Evictions and fair housing implications**
- a. Oregon landlords are not required to give a reason for a 30- or 60-day no-cause eviction, though it can be contested if the renter believes it's retaliation for asking for repairs or because the renter is a member of a protected class. Such evictions are nearly impossible for the state to count or track, because landlords only have to provide notice to their tenants in most cases.
 - b. Jurisdictions may require that housing providers furnish the city information on all no- cause evictions notices, regardless of whether or not there is a legal proceeding to determine the extent that these evictions are taking place.

- c. The information on no cause evictions could also be required to include demographic information.
 - d. There should be a way for tenants to provide this information to the city as well, to ensure proper compliance and accurate reporting.
 - e. By analyzing evictions, the city could better understand how policies are connected to displacement and the effect of this practice on diversity and fair housing. Studies have shown that these no cause evictions could be having a disparate impact on particular protected class populations.
7. **Gentrification, displacement of communities, fair housing implications and potential steps to prevent it**
- a. In the last two decades, Portland’s North and Northeast neighborhoods have seen significant public and private investments, steep increases in housing prices, and changes in demographic and economic profile of residents and community-serving small businesses. Making investments to improve a neighborhood, which can have many positive outcomes for current residents, can make the neighborhood more attractive and create upward pressure on rents and property values. The key distinction between revitalization and gentrification is the negative consequence of involuntary residential displacement. This displacement has a disproportionate impact on many protected class communities, particularly communities of color, and in Portland, the African American community.
 - b. Here are a few steps jurisdictions can take that may prevent this displacement including:
 - i. Jurisdictions may adopt specific anti-displacement protocols when funds have been placed into certain areas of the jurisdiction (ie: when areas are designated as Urban Renewal Districts). For example, when residential buildings are being rehabilitated, the city and the local community should begin prioritizing the following methods to prevent displacement of the area’s current residents:
 - ii. The jurisdiction could work with neighborhood private/public partnerships (using a community benefit agreement or CBA) during rehabilitation projects to rent/lease land and/or other residential building space while a building is being rehabilitated or upgraded. This help will create in-place homes for current residents during remodels and while investments are being made in their communities.
 - iii. The jurisdiction could have a policy of constructing replacement low income housing in a neighborhood *before* the demolition and remodeling takes place. All affordable housing built in these areas could be designated as “anti-displacement housing.” The City could work with community partners, advocacy organizations, the housing authorities, and other diverse community outlets (such as churches) to ensure that marketing for these housing units is affirmative and seeks to market to the displaced communities.
 - iv. In Urban Renewal Areas, the jurisdiction could set aside funding and assistance for current homeowner’s and apartment owners to repair their homes, address health and safety issues, energy efficiency issues, other owner requested repairs, and use code enforcement to ensure all homes are up to code. Lower maintenance and utility costs are one way that will help homeowners cope with property tax increases that are likely to result from significant investment in their neighborhood.
 - v. The jurisdiction can strengthen partnerships with the faith community to rehabilitate vacant houses for sale to low income families in their neighborhoods. Through these partnerships, the local churches can conduct outreach to their congregations to identify low-income families who want to become homeowners, provide support to the families throughout the home buying process and while owning the home. In addition, the congregations or neighborhood association could use volunteer supplies, resources, and man-power to help rehabilitate certain homes in their neighborhoods.
 - vi. Jurisdictions can promote the idea of “limited equity cooperatives.” The limited equity cooperatives give tenants cooperative ownership and control over their housing. A lease purchase agreement gives individual tenants the right to purchase their home for a set buy-out price after a set amount of time, while an installment land sale contract allows tenants to build equity and purchase their home over time. A right of first refusal gives a tenant association the right to buy their housing before it can be sold to anyone else. Tenants do not control the day-to-day operations, but they do control major decisions and can make sure that their properties continue to be well-maintained and affordable over the long term.
 - vii. For each Urban Renewal Area going forward, the City, in collaboration with each community (using community benefit agreements), could focus on the following priorities:
 - 1. A certain percentage of affordable housing requirement for new residential development
 - 2. Construction of community facilities
 - 3. Construction of cultural facilities
 - 4. Rehabilitation of existing and historical cultural buildings

- 5. Preservation of existing project based subsidies.
 - viii. Work with local neighborhood associations to ensure that each has a Master Plan that creates a strategic plan of how the neighborhood and its residents want to grow and prioritize development going forward. The City, the County, the Development Commissions, and the Urban Renewal Authorities could be required to use each neighborhood’s Master Plan, alongside Opportunity Mapping, when making decisions regarding project selection and development activities in each neighborhood.
 - ix. Promote transit-oriented development (construction of mixed used development, affordable housing, schools, groceries, and community centers around transit).
8. **Design and construction and fair housing**
- a. FHCO has audited many new apartment complexes built after 1991 that do not meet basic design and construction requirements and are in violation of Section 504.
 - b. Jurisdictions could ensure that multifamily housing meets the design and construction requirements under the Fair Housing Act prior to issuing occupancy permits.
 - c. Jurisdictions could ensure advertisement of accessible housing as well as provide incentives for housing that exceed the minimum accessible design standards.
9. **State of Oregon QAP/LIHTC allocations**
- a. FHCO has reviewed the State of Oregon’s 2013 QAP (Qualified Allocation Plan) for its LIHTC (Low Income Housing Tax Credit) program and offered suggested improvements, including basis boost, to facilitate housing choice in areas that do not contribute to concentrations of poverty. These allocations must be reviewed and given carefully thought out criteria that accounts for local nuances to ensure the equitable dispersion of affordable housing throughout the State of Oregon.
10. **When Section 8 becomes a protected class in July 2014, FHCO has heard of a number methods landlords may begin using to avoid Section 8 tenants:**
- a. Landlords may begin raising rent so Section 8 tenants are not able to rent properties
 - b. Landlords may leave items in The landlords learning things in unit so that Section 8 tenants are left with a high deposit and the housing authorities have to tap into housing fund
 - c. Landlords may not keep repairs up in the unit, not take care of lead based paint issues, say they cannot afford to fix problems in the unit, etc. so they don’t pass the housing authority inspections and are not approved as Section 8 landlords
 - d. Landlords will have Section 8 tenants will pay application fee, but then not accept tenants and keep the fee
11. **Landlord licensing and cultural competency training: how to get landlords to attend fair housing trainings**
- a. Jurisdictions may require landlord, property manager, real estate agent and loan officer licensing. This would allow the jurisdictions to ensure anyone involved in the housing transaction process clearly understands issues such as the following:
 - i. Fair Housing law
 - ii. Landlord tenant law
 - iii. How the Section 8 Voucher program works
 - iv. What project based subsidies are available (ie: Project-Based Section 8), and how the system works
 - v. How to advertise on local affordable housing databases (ie: *HousingConnections*)
 - vi. An overview of the history of the area (ie: demographic changes, gentrification, segregated housing patterns, etc)
 - vii. With a continually shifting demographic, a general cultural competency training that covers many different groups, including but not limited to: LGBTQ, the senior community, the Native American community, those who cannot speak English, the immigrant community, etc.
 - b. There is already a model for this practice with the requirement for manufactured park owners/operators to attend mandatory training and register their parks.
12. **Kids and Fair housing issues**
- a. Overly restrictive occupancy policies (many times these policies are only applied to families with children or for Latino families)
 - b. “Boys and girls can’t share a room”
 - c. Community rules that disproportionately affect children (“no toys on the deck”, “no children in pool”, “no playing on sidewalks”, etc.)

- d. Prohibition of children of certain ages in Oxford or other recovery homes

13. Roommate Situations

- a. Confusion around communal living in one building, shared bathrooms, shared community spaces
- b. What is protected under the Fair Housing Act? Gender? Sexual Orientation? Familial Status?
- c. Do landlords receive same protections if they are not living on site?
- d. Both housing seekers and housing providers need clarification on this issue.

14. Lack of collaboration when addressing jurisdictional barriers to fair housing

- a. The City of Portland, Clackamas County, Unincorporated Multnomah County, the City of Gresham, Washington County and City of Hillsboro have recently begun convening a regional fair housing group to address fair housing issues, policies, affordable housing allocation, transportation decisions, zoning, etc. in a more holistic and cohesive manner.
- b. However, fair housing plans are enacted and created throughout the state. There is a lack of collaboration and information sharing between jurisdictional and regional partners (example: why do some jurisdictions perform audit testing, while others do not utilize this investigative tool?).
- c. After reviewing all analyses of impediments, a common problem identified by most small and large jurisdictions is how to affirmatively further fair housing when creating land use laws, affordable housing allocation, urban growth boundary expansion, occupancy standards, applying for CDBG funding, etc. A larger problem identified on a statewide level is how to achieve equitable housing partnerships to ensure that each jurisdiction clearly understands how to accomplish AFFH given its size, resources, and obligations.
- d. FHCO is working with community partners and government agencies to create a fair housing toolkit for planners and CDBG recipients. The toolkit that can help identify and address the unintended or intended barriers to housing choice imbedded in land use codes and practices. The checklist will then be expanded to include a toolkit that may include methods of promoting development of affordable housing and circumventing Oregon's prohibition of inclusionary zoning, methods of to creating culturally competent communities, how to create policies that work to prevent displacement of communities, etc. The toolkit will be made for both large and small jurisdictions.

15. Social Security Numbers

- a. Blanket screening policies that do not allow anyone without a SS card to apply have a disparate impact on particular protected classes.
- b. Landlords need training on how to do a basic screening for tenants without SSNs.
- c. There are many problems in obtaining prior histories (rental, credit, criminal, etc.) for those who have immigrated from other countries and/or foreign students. Landlords use this concern to automatically deny housing to members of these populations.

16. International Students and housing providers issues:

- a. FHCO has recently been made aware of a concern of Housing providers who have stated that many of the international students starting college have grown up in an environment where they were not responsible for the household cleaning and did not learn how to do basic upkeep of an apartment nor how to manage apartment finances. As a result, units are not being maintained properly. For example, water damage occurs because shower curtains are not being used, hookah smoking is being performed in non-smoking rooms. Security and damage deposits frequently do not cover all of the damages and the students have returned home so collections/small claims court is not an option.
- b. Housing providers cannot request larger deposits for international students without risk of disparate impact discrimination and requesting larger deposits for students could be considered age discrimination.
- c. International students also may not understand when rent is due and that it is due every month, whether the student is there or not.

- d. Possible ways to solve the issue: charge a higher security deposit for ALL tenants; a training for all international students when they come into the University provided by the International Student Office (i.e.: know your renter rights or how to be a renter classes); a cultural sensitivity class or training for the property managers to help them deal with each of these issues with a more culturally appropriate lens; a cost benefit assessment of how widespread is the issue across jurisdictions.
17. **Source of Income: DHS social service agencies, paying rate**
 - a. Landlords taking advantage of those with subsidies or vouchers: “My move in fees are \$500, but I am going to charge you a \$300 “assistance fee” because I know that your housing authority program is paying more than what I am charging everyone else for rent.”
 - b. Landlords making rent increases (sometimes with Section 8, sometimes mobile home, sometimes “ I just can’t believe they can raise the rent this much” kind of calls)
 18. **Shelters and Fair housing Issues**
 - a. Many issues and confusions around gender identity and sexual orientation and shelter rules exist among temporary and transitional housing providers.
 - b. Similar confusion and refusal to comply with Fair Housing Law exists in regard to accepting assistance animals. (Providers and consumers are unsure what is considered a “dwelling” as covered by the fair housing laws.)
 19. **Self- selection for a particular group**
 - a. Members of a variety of protected classes may opt not to apply or live in particular housing units because they do not feel welcome or accepted. Most recently we have been made aware that this is a problem with selection of retirement communities and assisted living facilities among the LGBTQ community.
 20. **Marital Status**
 - a. Religious opinions around marital status (must be married to rent the unit) may limit provider’s willingness to rent to specific individuals. This directly violates the Oregon State fair housing law (marital status is a protected class).
 - b. This issue also may have a disparate impact on the LGBTQ community (if a landlord or retirement community only allows couples who are married, and gay marriage is not legal in Oregon, the landlord can by default exclude all LGBTQ individuals).
 21. **Neighbor on neighbor harassment is protected under fair housing law**
 - a. The number of tenant-tenant relation questions increase during the summer (people outside, barbecues, kids riding bikes, sprinklers, water guns, etc.). Issues frequently cross into areas covered by fair housing laws (usually children related).
 - b. Fair housing issues are commonly experienced by people with mental disabilities and their neighbors
 - c. FHCO has also seen an increase in neighbor on neighbor harassment surrounding national origin, race and sexual orientation. Other neighbors or the victims complain to the manager or the landlord and the landlord does not take the needed actions to prevent the harassment.
 22. **Landlords don’t understand assistance animals (a few calls per week) and other reasonable accommodation requests**
 - a. Reasonable accommodation requests (companion animals, closer parking spaces to units, more time to move when being evicted, etc.) may not be considered by housing providers.
 - b. Landlords and neighbors are fearful of stereotyped aggressive breeds of animals that may be providing assistance to a person with disabilities.
 - c. Validity of doctor’s letters for reasonable accommodations maybe questioned by housing providers.
 - d. Confusion about ADA and Fair Housing Act of assistance animals is widespread.
 - e. Confusion around medical marijuana and disability protections in Oregon is widespread.
 23. **HOAs**
 - a. Across the board (race, sexual orientation, disability, national origin, etc.) FHCO repeatedly encounters homeowner’s associations that do not know fair housing law and/or do not feel they need to follow the law (group home issues, don’t want to sell to LGBTQ/Latino individuals, etc.).
 24. **Lack of access to getting in the door**

- a. In Audit testing with Latino, Vietnamese, and Black testers: the protected class testers did not get the same info as the comparison testers; comparison testers consistently receive more information and don't have to probe for information; comparison testers are told about nicer units, more units, and about deals and promotions; Latino and Vietnamese testers routinely do not called back when they leave a message; etc.
25. **Domestic Violence and fair housing**
- a. FHCO routinely finds ignorance or disregard for DV protections among housing providers. For example:
 - i. Evictions due to noise complaints related to domestic violence situation
 - ii. Landlords denying an applicant based solely on the fact they are a victim of domestic violence
 - iii. A tenant needs to break a lease early due to a domestic violence situation and the landlord wants to assess fees
 - iv. A tenant needs to change their door locks or move to a different unit due to a domestic violence situation and the housing provider refuses to assist the victim
 - v. A tenant has a spotty rental or criminal history as a result of the actions of their abuser in a domestic violence situation
 - b. We commonly find communities that have overly restrictive nuisance ordinances: once a household has a certain number of 911 calls, the landlord can evict the tenant. This may have a disparate impact on women who are in domestic violence situations.
 - c. Landlords commonly deny HUD housing vouchers provided to DV victims.
26. **Issues with residence service coordinators:**
- a. An increasing number of housing complexes employ resident service coordinators to help create community among the residents and act as a liaison between the property management and the residents. They are a great asset to the complex and can help to make the transition into a community much easier for new residents.
 - b. To ensure that the resident service coordinators can do their jobs, work effectively with tenants, and not run into fair housing issues, property managers need to ensure there is a clear firewall between resident service coordinators and the management. The RSC's should act as a liaison between the PM's and the tenants, and should advocate on behalf of tenants' needs.
27. **Other Landlord/Tenant Issues identified that may have fair housing implications:**
- a. Landlords collecting fees without sharing clear criteria with the tenants
 - b. Tenants frequently do know their rights screening regulations and therefore do not complain if their rights are violated by unscrupulous landlords or screening companies.