



# ENSURING FAIR AND AFFORDABLE HOUSING THROUGH ZONING

## FACT SHEET # 14

Today, in Indiana and throughout the U.S., many communities are suffering from a housing crisis. As the National Low Income Coalition's "Out of Reach 2016" Report notes, due to low wages, individuals and families can't afford places to live in many of the nation's communities despite full time employment. Unfortunately, opponents wrongly hold that affordable housing negatively impacts communities, causing crime to rise, schools to worsen, and real estate prices to fall despite studies showing otherwise. When affordable housing is "fully incorporated" into a community, rather than placed on the outskirts, it attracts businesses, provides citizens access to better schools and job opportunities, and creates diverse, thriving communities.

According to fair housing laws, a dwelling includes "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof". Therefore, decisions related to the development or use of such land may not be based upon the race, gender, religion, national origin, color, disability, or familial status of the residents or potential residents who may live there. Fair housing laws also require municipalities and local governments to make reasonable accommodations to zoning and land use rules, policies, practices, and procedures as necessary to provide an individual with a disability equal housing access.

**What is a reasonable accommodation?** Reasonable accommodations, as defined by fair housing laws, are changes in rules, policies, or practices that are necessary to afford persons or groups of persons with disabilities equal opportunity to use and enjoy housing. This requires municipalities to make reasonable accommodations in land use and zoning policies and procedures. Reasonable accommodations provide a means of requesting from the local government flexibility in the application of land use and zoning regulations, or, in some instances, even a waiver of certain restrictions or requirements. For example: a zoning board grants an accommodation to designate a group of individuals with disabilities who intend to live together in a group or recovery home as a "family" so as to allow more unrelated adults in a single family home than normally permitted under zoning.

**What makes a zoning practice unlawful under fair**

**housing?** A municipality may not make zoning or land use decisions based on neighbors' fears that a dwelling would be occupied by members of protected groups under fair housing laws. Zoning ordinances may not contain provisions that treat uses such as affordable housing, supportive housing, or group homes for people with disabilities differently than other similar uses, and municipalities may not enforce ordinances more strictly against housing occupied by members of the protected classes. Another way that discrimination in zoning and land use may occur is when a facially neutral ordinance has a disparate impact, or causes disproportional harm, to a protected group. Land use policies such as density or design requirements that make residential development prohibitively expensive, prohibitions on multifamily housing, or a ceiling of four or fewer unrelated adults in a household may be considered discriminatory if it can be proven that these policies have a disproportionate impact on persons of color, families with children, or people with disabilities.

Placement of new or rehabilitated housing for lower-income people is, unfortunately, one of the most controversial issues communities face. If fair housing objectives are to be achieved, the goal must be to avoid high concentrations of low-income housing and to approve housing developments that will promote integration. A municipality considering a proposal from an independent housing developer or provider to provide integrated housing within the municipality's jurisdiction must not deny the housing without careful consideration of the need for new integrated housing opportunities in the vicinity of the developer's proposed project and the degree of residential segregation in that community in light of the population demographics in the overall metropolitan area. *Although zoning and land use is an area where municipalities have primary power, courts have consistently held that the Fair Housing Act prohibits local governments from exercising their zoning and land use powers in a discriminatory way.* Unfortunately, it is still common practice for jurisdictions to try to use zoning laws to prevent affordable housing development in communities (commonly called "exclusionary zoning").

### Examples of Prohibited Activities Under the Fair Housing Act

- A municipality may not reject a proposed affordable housing development in response to neighbors' fears that such housing will be occupied by racial minorities.

- A municipality may not require neighbor notification or a public hearing only for the development of affordable housing or group homes, but not other types of residential development.
- A municipality may not refuse to allow an exception to a setback requirement as a reasonable accommodation for a resident with a disability who needs to build a wheelchair ramp in order to access to his or her home.
- A municipality may not impose spacing requirements on group homes for persons with disabilities.
- A municipality may not require additional studies or procedural steps or unnecessarily delay decision making when considering a development that may be occupied by members of the fair housing protected classes.

**Combating NIMBYism.** Whether the persons to be served are families with children, persons with disabilities, homeless persons, or lower-income minorities, many communities feel strongly that housing for these persons should be provided but “not in my back yard” (NIMBY). This attitude seriously affects the availability of housing for people in these groups and is one of the most difficult challenges jurisdictions encounter in promoting fair housing objectives. Discriminatory stereotypes, fears and comments about residents of prospective residents of a certain dwelling or area should not influence municipal zoning or land use decisions.

**Definition of “Family” and “Single-family” Residential Zones.** Single-family residential zones allow family residential use by right, i.e., without any conditional or special use permit, and are not in and of themselves discriminatory. Local governments have their own definitions of “family,” and such definitions may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups regardless of race, religion, etc. However, they may be discriminatory when they exclude group homes for persons with disabilities, or if group homes are allowed only by conditional or special use permit. Further, policies that have a ceiling of 4, or fewer, unrelated adults in a household may be considered discriminatory if they have an adverse impact on minorities, families with children, or people with disabilities.

*The mission of the Fair Housing Center of Central Indiana (FHCCI) is to ensure equal housing opportunities by eliminating housing discrimination through advocacy, enforcement, education and outreach. The FHCCI is located at 445 N. Pennsylvania St., Suite 811, Indianapolis, IN 46204. Phone: 317-644-0673 or 855-270-7280. Relay: 711. Email: info@fhcci.org Web: www.fhcci.org*

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**Land Use Regulations.** Zoning policies such as large minimum lot requirements, minimum multifamily zoning and age-restricted zoning may restrict and limit the ability for lower-income families and families of color from moving into certain neighborhoods and suburbs. Such strict zoning restrictions limit the affordability and number of rental multifamily housing opportunities and should be carefully considered in light of fair housing laws.

### Suggested Fair Housing Strategies

**Adopt a Reasonable Accommodation Policy** This will provide a written procedure, especially for developers of housing for persons with disabilities, to follow when requesting reasonable accommodations in zoning and land use decisions in addition to guidelines for the Planning Commission to follow when considering requests.

**Adopt an Inclusionary Zoning Policy** Inclusionary housing is the practice of requiring that affordable housing be included in all new housing developments. “Inclusionary zoning” promotes mixed-income development and results in many benefits for communities, particularly the creation of affordable places to live in desirable neighborhoods. Neighborhoods which are ethnically and economically integrated provide greater opportunity for creating a diverse work force and more diverse and vibrant communities.

**Affirmatively Furthering Fair Housing** Consider specific changes that should be made in zoning or building occupancy ordinances or regulations to foster inclusion of lower-income housing, including housing accessible to persons with disabilities and families with children in developments intended for households with higher incomes. Ensure that the ordinances and regulations do not contain special rules or restrictions for housing that only apply to individuals with physical or mental disabilities (i.e. requiring individuals with mental disabilities to show they had the capacity to live independently, or prohibiting a group of persons with mental illness from residing in an area where other groups of unrelated adults may reside). Consider specific changes that should be made in policies and procedures, other than those relating to zoning and building occupancy, to promote greater variation in the location of lower-income housing.

