



GUIDE for
HOUSING PROVIDERS

Finding **Common
Ground
Inclusive
Communities
Toolkit**
July 2014





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TABLE OF CONTENTS

finding COMMON
GROUND
Inclusive
Communities
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July 2014

SECTION 1.



THE BASICS

An introduction to fair housing and inclusive communities

SECTION 2.



FAIR HOUSING, AFFORDABLE HOUSING AND HOUSING FOR PEOPLE WITH DISABILITIES

An introduction to the two types of housing developments where concerns around fair housing are especially likely to surface

SECTION 3.



INFORMATION FOR HOUSING PROVIDERS

How to engage constructively and stay on the right side of the law

SECTION 4.



RESOURCES

Information about other guides and key resources for those who wish to go deeper

INTRODUCTION

This GUIDE IS FOR HOUSING DEVELOPERS AND PROVIDERS who encounter opposition to their efforts to create housing opportunities for those who are not well-served by the private market. While there is no “app” for creating inclusive, welcoming neighborhoods that are safe places to live, new knowledge and understanding can help build a strong foundation for productive engagement. This guide aims to provide that information.

From our ancient roots as hunters and gatherers, we human beings are hard-wired to be wary of situations that are unfamiliar and people who seem different from us. We also have a sense of territory. Instinctually, we feel an impulse to exert control over areas we consider belong to us.

Fortunately, we’re also hard-wired to want to live in a community. The communitarian impulse supports our efforts to figure out how to get along and to seek benefit from associating with those who have abilities and insights different from ours. It takes hard work to navigate our differences and reach solutions that provide an acceptable level of personal security for everyone. The first step starts with communication.

When changes are planned for a neighborhood, whether it is a single house, a new apartment complex or a new institution such as an assisted care facility, sometimes

neighbors object. They may not oppose the proposed project per se, but they may object to its location in their neighborhood. They may believe it belongs somewhere, as long as it is somewhere else.

Sometimes opposition is based on non-discriminatory factors—fact-based concerns about traffic, for example—that place an undue burden on a neighborhood. However, opposition can also represent a desire to avoid having to deal with people who are viewed as being “different.” Sometimes external impacts like traffic and parking problems masquerade as rationales for opposition when the real motivation is a desire for social exclusivity.

While supporting the development of an inclusive community is an art, not a science, there are some clear rules, based in federal and state law, which govern what is lawful and what is not. This guide provides guidance on those fair housing rules.

This **GUIDE FOR HOUSING PROVIDERS** is one of a series of three guides that provide practical, experience-based information to stakeholders who may become involved with local opposition to new housing or new neighbors. The other two guides are:

- **GUIDE FOR NEIGHBORS**
- **GUIDE FOR ELECTED OFFICIALS**

THIS GUIDE HAS FOUR SECTIONS

1.



THE BASICS

An introduction to fair housing as it relates to inclusive communities

2.



FAIR HOUSING, AFFORDABLE HOUSING AND HOUSING FOR PEOPLE WITH DISABILITIES

An introduction to the two types of housing developments where concerns around fair housing are especially likely to surface

3.



INFORMATION FOR HOUSING PROVIDERS

How to engage constructively and stay on the right side of the law

4.



RESOURCES

Information about other guides and key resources for those who wish to go deeper

SOURCING

This guide draws extensively from guides produced for other states and audiences. For ease of reading, we have elected to not cite specific sources in the body of this guide, but included them in the list of resources that forms the final chapter. We wish to thank and recognize the many sources whose work provided the foundation for this guide.



Interspersed throughout are **MYTHS AND FACTS + STORIES FROM THE FIELD** that use examples of things that actually occurred in Oregon to illustrate the main ideas.

1. THE BASICS



This section of the guide provides an introduction to fair housing concepts and touches on some of the most common rules that come into play when a new housing development or a change in use of an existing residential use sparks concerns in a community about the kinds of new neighbors who may move into the area.

INTRODUCTION

Neighborhoods are changing all the time. Neighbors move in and out and businesses come and go as well. For some, change can be challenging and can make people feel uneasy or conjure up fears of the unknown. But change can also be an opportunity. This guide focuses on the opportunity to channel change in a way that fosters inclusive communities.

Fair housing laws ensure access to housing opportunities for all, regardless of their backgrounds, beliefs or abilities. In effect, fair housing laws help identify which issues can be legally addressed when community concerns arise, and which infringe upon the rights of others not yet living in the neighborhood. Neighborhood activists, public officials, city staff and developers all need to understand the law. The law helps to achieve a balance between existing neighbors' concerns and the right of all people to access a range of housing options and neighborhoods.

FAIR HOUSING AND PROTECTED CLASSES

The purpose of fair housing laws is to provide access to housing choice by everyone, free from discrimination. The federal Fair Housing Act makes it unlawful to discriminate against people seeking to obtain housing. A wide range of housing-related activities are covered by fair housing law, including renting, selling, lending, zoning and providing insurance. Under national fair housing laws, it is illegal to deny access to housing to people because of their race, color, national origin, religion, gender, familial status (the presence of children in a household) or disability. These seven characteristics are called the federal protected classes. In Oregon, it is also illegal to discriminate in housing transactions based on a person's marital status, source of income (including, as of July 1, 2014, Housing Choice/Section 8 Vouchers), sexual orientation (including gender identity) or status as a domestic violence victim—Oregon's protected classes. Some cities and counties have identified additional local protected classes that apply within their boundaries.

Being a member of a protected class does not give someone the right to engage in unlawful activities. For example, if someone who is disabled or a person of color commits a robbery, he/she is subject to arrest and prosecution just like anyone else. The Fair Housing Act affords no protections

DEFINITION

in·clu·sive

adjective \in-'klü-siv, -ziv\
: open to everyone : not limited to certain people

com·mu·ni·ty

noun \kə-'myü-nə-tē\
: an interacting population of various kinds of individuals in a common location

Source:

www.merriam-webster.com/dictionary

to individuals who present a direct threat to others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about a group of people or how individuals who are part of that group (such as people with mental health disabilities) might act.

Nor do fair housing laws (with one exception, special accommodations for people with disabilities, discussed in a later section) convey special privileges or rights to an individual based on his or her membership in a protected class. The intention of federal, state, and local fair housing laws is to require that all individuals be given the same treatment, the same services, and offered an equal opportunity to live in a home of their choice.



PROTECTED CLASSES

FEDERAL

- race
- color
- national origin
- religion
- gender
- familial status
(the presence of children in a household)
- disability

STATE

- marital status
- source of income
- sexual orientation
- status as a domestic violence survivor

THE BASICS



FAIR HOUSING AND TYPES OF DISCRIMINATION

Fair housing law protects against three kinds of discrimination:

Direct Evidence: Actively and openly limiting access to housing on the basis of protected class. An example of direct evidence would be the refusal to rent to someone solely because he was born in Saudi Arabia and is Muslim. That would represent discrimination on the basis of national origin and religion.

Unequal Treatment: Treating people differently based on protected class status; for example, requiring a renter with two children to pay twice the security deposit of a renter without children is discrimination on the basis of familial status.

Disparate Impact: Having a discriminatory effect on a protected class while appearing to treat everyone the same. For example, giving preference to renting to households with people who don't work in the local fish cannery would have a disparate impact on the Latino population if the vast majority of cannery workers are of Hispanic national origin.



THE FAIR HOUSING ACT

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, codified at 42 U.S.C. 3601-3619), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18) and disability. At the urging of President Lyndon B. Johnson, Congress approved the Civil Rights Act of 1968, and it was signed into law one week after the assassination of Dr. Martin Luther King, Jr.



DID YOU KNOW?

Deed restrictions were used to prohibit the sale of homes in certain areas to people of color and, in some cases, people from specific national origins. Such restrictions are now null and void by virtue of the Fair Housing Act of 1968.



DISPARATE IMPACT AND LAND USE LAWS

It is important to note that a practice does not need to be intentionally discriminatory for it to be in violation of fair housing laws. One of the complicated realities of American culture is that discriminatory practices—practices that have disproportionately negative effects based on protected class—have occurred for decades before fair housing laws were adopted. Discriminatory practices are so deeply imbedded in our institutions, traditions and ways of doing business that it can be hard to identify and isolate them. We continue those institutions and practices, unwittingly perpetuating their negative effects.

One of the main ways that the concept of disparate impact affects neighborhood quality is through zoning ordinances and practices. Fair housing laws prohibit land use regulations, restrictive covenants and conditional or special use permits from imposing special conditions that have the effect of limiting housing choice based on protected class status. In the past, deed restrictions were used to prohibit the sale of homes in certain areas to people of color and, in some cases, people from specific

national origins. Upheld as legal by a Supreme Court decision in 1917 (*Buchanan v. Warley*, 245 U.S. 60 (1917)), such restrictions are now null and void by virtue of the Fair Housing Act of 1968. A more contemporary example of a policy that would have a disparate impact is requiring an applicant seeking to build a single-unit house for five unrelated people who have disabilities (a protected class) to undergo additional hearings, reviews or community meetings that are not required for a single-unit house for any other group of five unrelated individuals.

A recent example of disparate impact and jurisdictional involvement is the *Mount Holly v. Mount Holly Gardens Citizens in Action, Inc.*, in which the Township of Mount Holly planned to tear down existing housing to build higher-end housing. The citizens who lived in the existing housing protested, saying that they would not be able to afford to live in the new housing and this would have a disparate impact on the township's minority population. The citizen group sued the jurisdiction under the Fair Housing Act, citing disparate impact. The case was settled in favor of the citizen group before it reached the Supreme Court.

THE BASICS



REASONABLE ACCOMMODATION FOR PEOPLE WITH DISABILITIES

As mentioned above, people with disabilities do have an extra privilege under fair housing to ensure that they can access equal housing opportunity. The Fair Housing Act requires housing providers respond to requests for reasonable accommodations. These are exceptions to rules, policies, practices or services to enable people with disabilities to live in the residence. This includes physical modifications to make the residence accessible. Local officials are also required to consider reasonable accommodations to zoning, building codes and ordinances.

Local jurisdictions are required to make case-by-case determinations about what is reasonable based on the facts of the particular case under consideration. For example, the accommodations required to assist people with mobility impairments may be different from those needed to assist people with loss of hearing. In neither case could basic health and safety precautions be set aside, nor could the general nature of the zoning of the neighborhood be changed.



WHAT DOES DISABILITY MEAN?

There are many different definitions of disability. The one relevant to fair housing is the one included in the Fair Housing Act, which states that someone is disabled if he or she has a physical or mental impairment which substantially limits one or more major life activities, including having a record of or being regarded as having such impairment (42 U.S.C. 3602 (h)).

FREE SPEECH AND PUBLIC DECISIONS

Fair housing laws require that public decisions about housing developments not be based on the race, color, religion, sex, national origin, familial status or disability of the residents. It also prohibits public decisions and policies that have a disproportionate impact on members of one or more protected classes.

Community members have the right, under First Amendment free speech protections, to express their opposition to projects on any

basis (as long as it does not constitute illegal intimidation). However, land use and other public decisions may not be made on the basis of concerns based upon discriminatory assumptions. Local officials, including staff, may only make their decisions based on fact-based, non-discriminatory factors. Furthermore, the law prohibits the public from asking for information about the extent or type of disability an individual or group of individuals may have.

CONCLUSION

The creation of safe, inclusive communities—places where people from a variety of backgrounds and abilities can thrive—is more of an art than a science. It involves achieving a delicate balance among many different pairs of opposing forces, such as:

- The desire of longstanding residents to control their community’s future vs. the desire of newcomers to have housing choices
- The need to apply laws equally to all vs. the requirement to be flexible around the margins if so requested by someone with a disability (reasonable accommodation).



CONFRONTING EMBEDDED DISCRIMINATION?

Stella Adams, a fair housing consultant from Durham, North Carolina, compares deeply imbedded discriminatory practices from the past that continue into the present to sour dough starter that incorporates some toxic yeast. When new loaves are made from the starter, the bad yeast is baked in to the new loaves, even though the baker had no idea that toxic yeast was present. Furthermore, the bad yeast is incorporated into the dough left over to make new starter for the next batch of loaves. Getting rid of the bad leavening requires a conscious choice and hard work to create a fresh, clean batch of “mother” sourdough starter.



2. FAIR HOUSING

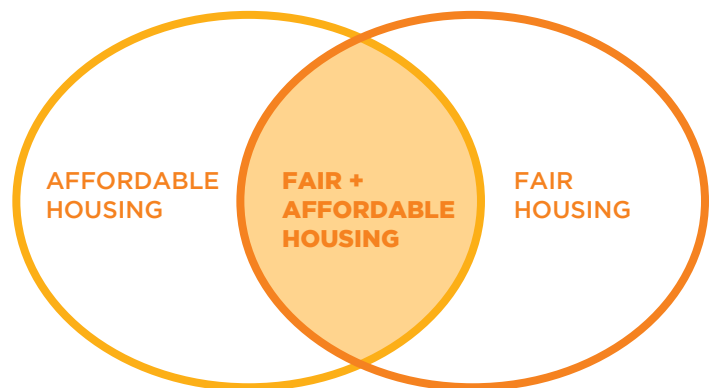


Fair housing issues may arise with respect to any kind of housing development and in any kind of neighborhood. For example, opposing a mosque's efforts to partner with a developer to create a new apartment complex in the neighborhood would likely be a fair housing violation if the objection based on not wanting people who practice Islam to move into the neighborhood. A city that refuses to permit the development of a high-end assisted living facility for adults with Alzheimer's disease based on the complaints of neighbors who don't want to live next door to "crazy people who wander" would also likely be a violation of fair housing laws based on disability.

While fair housing issues may arise in many different kinds of situations, there are two kinds of housing developments where both neighborhood resistance and fair housing issues may surface: subsidized/low cost/low income/affordable housing (it goes by many names) and projects serving people with disabilities (also called special needs housing). This chapter considers both in some detail.

THE OVERLAP BETWEEN FAIR HOUSING AND SUBSIDIZED HOUSING

In most communities, the majority of people who need subsidized housing are also people whose access to housing choice is protected under fair housing law. For example, in many communities, a greater share of people of color (race, national origin and color) may need subsidized housing than the majority population; thus, in this community, the rejection of subsidized housing would have a disparate impact on people of color. The reasons for this are complex and have deep historical roots related to decades of discriminatory practices that impacted the life opportunities of people of color and other groups, as well as contemporary patterns and institutional practices that have a disparate impact. The diagram below illustrates the overlap, or nexus, between fair housing and subsidized housing.



Rejecting a housing project on the grounds that it will serve low income people is, in most instances, a violation of fair housing because that decision would have the effect of discriminating against people on the basis of their membership in a protected class, regardless of whether or not the discrimination was intentional. In other words, that decision would have a disparate impact on minority populations protected under fair housing laws.

While the nexus between fair housing and affordable housing is a key principle, it is also important to remember that people who are not low-income can also experience housing discrimination. For example, during the housing crisis of the last decade, people of color in some cities tended to be offered riskier home mortgages (with higher interest rates and, in most cases, a greater likelihood of default) than the majority population with similar incomes. While these homebuyers of color were not low income, they likely experienced discriminatory practices in the mortgage lending market.



MORTGAGE DENIAL RATES DIFFER IN OREGON BY RACE AND ETHNICITY

In Oregon's rural communities, blacks and Hispanics with incomes above \$75,000 per year had much higher denial rates for home purchase mortgage applications than their white counterparts. In 2004 - 2008, the denial rate for home purchase mortgage applications for whites was 17.0%; during the same period, the denial rate for blacks was 30.1% and for Hispanics was 25.6%.

Source: 2011-2015 Oregon Analysis of Impediments to Fair Housing Choice (Non Entitlement Areas), p. 42, Table III-6.
www.oregon.gov/LCD/docs/publications/introductory_guide_to_land_use_planning_in_oregon.pdf





FAIR HOUSING PROTECTIONS FOR THE DEVELOPMENT OF AFFORDABLE HOUSING

Fair housing laws affecting the development of affordable housing revolve around a few essential principles:

- Housing that serves people who are members of protected classes (minority populations) cannot be put through extra steps or be required to pay extra fees or meet criteria that are not required of housing that serves the majority population (everyone else). The “minority population” can be defined in terms of one or more of the seven federal protected classes or Oregon’s protected classes. Thus, it would be illegal for a jurisdiction to require developers of multifamily affordable housing to meet with neighbors if it did not require the same of all multifamily housing developers. (Unequal Treatment)
- It is illegal to have laws that seem neutral on the surface but result a disproportionate cost or delay for housing that serves minority populations. (Disparate Impact)
- Outright discrimination is also illegal, such as prohibiting the development of affordable housing in the jurisdiction.

It is important to remember that people in protected classes must follow rules and regulations that govern the rest of the population. People cannot use fair

housing as an excuse for breaking the law. Furthermore, fair housing does not protect people who pose a direct threat to people or property. The law requires that such determinations be based on objective proof of a threat by specific individuals and not generalizations about a population.

HOUSING FOR PEOPLE WITH DISABILITIES

Another category of housing that often triggers initial opposition is housing that serves people with disabilities or special needs housing. The reaction is often based on fear of people who seem “different.” The first step is to recognize the potential for having a fear-based reaction and make the conscious choice to move beyond it to facts, understanding, and community.

Since the 1960s, there has been a cultural change in the US involving the movement away from placing people with disabilities, or those recovering from alcohol and drug addictions, into large institutions. As a result, an increasing proportion of people with a wide range of disabilities—physical, mental health, developmental—live in communities, either in traditional housing or in staffed homes with services, depending on the individual.

There are many different types and names for specialized housing with services for people with disabilities, including supportive housing, group homes and community

MYTH

Affordable housing always lowers property values in the surrounding neighborhood.



FACT

How affordable housing affects nearby properties is complicated. In 2005, the *Journal of Planning Literature* published an authoritative review of seventeen academic studies that occurred over 40 years regarding the impact of subsidized housing on neighborhood property values. The author concluded:

- Housing that was acquired and rehabilitated as affordable housing had a positive effect on nearby property values.
- Subsidized housing had no effect on nearby property values when it was sited in healthy and vibrant neighborhoods, when it was dispersed, and when it had responsive, responsible management. Conversely, negative effects on property values were more likely to occur when affordable housing was clustered and located in declining neighborhoods.
- When negative effects do occur, they were relatively small, especially compared to other factors that affected property values.

Source: Nguyen, M.T. (2005). Does affordable housing detrimentally affect property values? A review of the literature. *Journal of Planning Literature* 20:15, DOI: 10.1177/0885412205277069





residential facilities. Examples include:

- Group homes for persons recovering from alcohol or drug addiction
- Residential treatment facilities for persons with a mental illness
- Adult foster homes for older adults needing assistance with activities of daily living
- Group homes for adults or children with developmental disabilities

In addition to these clear-cut examples, there are a variety of other living arrangements which may not, on the surface, appear to house people with disabilities, but which do so in fact. One example is transitional housing for formerly homeless individuals. While homelessness is not in and of itself considered to be a disability, many individuals who are homeless may have one or more disabilities. Others may be members of a protected class in Oregon by virtue of being a survivor of domestic violence. A disproportionate share of homeless youth are gay, bisexual, lesbian, transsexual or queer, and sexual orientation and gender identity are protected classes in Oregon. Thus, on a case-by-case basis, fair housing protections may extend to a wide variety of congregate living situations.

FAIR HOUSING PROTECTIONS FOR THE DEVELOPMENT OF HOUSING FOR PEOPLE WITH DISABILITIES

In addition to the protections for affordable housing described above, there are several additional principles that underlie fair housing as it applies to the development of housing for people with disabilities, including:

- **REASONABLE ACCOMMODATION:** As discussed in Chapter 1, the Fair Housing Act requires local governments to make minor modifications to local regulations (including zoning and land use regulations) if so requested, if doing so affords equal housing opportunity to people with disabilities. For example, a developer might request an exception to a required setback that would enable a wheelchair ramp with the proper slope to be installed.
- **NO QUOTAS:** The Department of Justice has advised local jurisdictions that setting quotas on the number or share of housing units that serve people with disabilities within a geographic area is a fair housing violation. The only time that jurisdictions may consider issues related to the concentration of people with disabilities within an area is when such concentration may work to the disadvantage of people with disabilities.



MYTH

Affordable housing is ugly and will quickly become an eyesore.

FACT

Perceptions about the design and construction of affordable housing project are often based on memories of old public housing projects, some of which were, indeed, built cheaply (by Congressional mandate) and were unattractive. Much has changed since then; in Oregon, the emphasis has been on building sturdy, attractive and highly functional housing for many years now. Nonprofits and public agencies that build affordable housing are in it for the long haul; it makes sense for them to use durable materials and maintain the properties, as they are long-term owners and not in this business to make money and sell the property to a new owner. Affordable housing developments that are well built, blend into the neighborhood and well maintained can be among a neighborhood's assets.



- **CONFIDENTIALITY:** Just like everyone else, people with disabilities have a right to privacy with respect to their medical information. Housing providers cannot disclose the nature of the disability that individuals have.

provide specific protections but are not as broad as federal fair housing law. Thus, it is necessary, but not sufficient, that local codes comply with Oregon law.

OREGON STATE LAW AND RESIDENTIAL HOMES AND FACILITIES

While each jurisdiction has its own zoning code and other rules that govern the location and development of housing for people with disabilities, Oregon also has adopted laws on this subject with which jurisdictions must comply. These state laws

Specifically, Oregon law requires that jurisdictions make licensed residential homes a permitted use in all residential zones and also in any commercial zone that allows single-family dwellings (ORS 197.660). A permitted use is a one that is allowed outright in a particular zone and does not require additional review to see if it meets extra criteria. A classic example of a permitted use is a single-family home in an area zoned for single-family residences.

FAIR HOUSING

A licensed residential home is defined as a home that is licensed by the state and serves no more than five individuals with mental health disabilities or addictions (residential treatment homes) or developmental disabilities (residential training homes). It also includes adult foster homes that serve five or fewer adults needing residential care in a homelike environment (ORS 443.400). The licensing agencies are the Oregon Health Authority, the Oregon Department of Human Services and the Oregon Department of Human Services or Health Authority for treatment homes, training homes and foster homes, respectively.

Fair housing laws provide even greater protections than the state protections for residential homes. Many different types of homes with disabled persons are not and do not need to be licensed. Many people that fall under the Fair Housing Act's definition of "disabled" have a high degree of self-care, and, while they may not need the level of service provided in a licensed home or facility, they may find group living situations beneficial. Permitting and zoning restrictions that directly target these unlicensed group homes or group living situations are a violation of the Fair Housing Act.

Thus in residential zones, a group home that serves five or fewer disabled individuals must be treated in the same way that a single-family home that serves five or fewer unrelated individuals would be treated. Jurisdictions may not require additional

review, hearings or meetings or impose additional standards on the group home.

Oregon state law also requires jurisdictions to make licensed residential facilities—facilities licensed to serve six or more individuals with physical, mental health or developmental disabilities (defined in ORS 443.400)—a permitted use in any zone where multifamily housing is a permitted use. They must also be either a permitted or conditional use in zones where multifamily housing is a conditional use (ORS 197.667).

KEY CONCEPTS

In general, people who need subsidized housing are also people whose access to housing choice is protected under fair housing law.

- **There are many myths surrounding affordable or subsidized housing and the people who reside there.**
- **Affordable housing does not automatically lower property values on the properties in the surrounding neighborhoods; property values depend on the current health of the neighborhood and a host of other factors.**
- **Affordable housing is more often than not attractive and well maintained.**
- **An increase in the number of low income people into a neighborhood does not necessarily translate into an increase in crime.**





CRIMINAL HISTORY

One attribute that is frequently of concern is NOT a protected class: involvement with the criminal justice system. The federal Department of Justice advises:

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others. (Joint Statement of the Department Of Justice and the Department Of Housing And Urban Development regarding Group Homes, Local Land Use, And the Fair Housing Act).

It is important to note that some re-entry housing developments serve people with addictions or other disabilities by design, and thus fair housing protections (such as the requirement to make reasonable accommodations if requested) would apply. However, this does not mean that the residents may lawfully continue to use illegal substances or commit any other kind of offense that would otherwise be considered a crime.

Source: Joint Statement of the Department Of Justice and the Department Of Housing And Urban Development regarding Group Homes, Local Land Use, And the Fair Housing Act, www.justice.gov/crt/about/hce/final8_1.php

MYTH

An increase in the number of people who have lower incomes means more crime.

FACT

That's not what the research says. In *Memphis Murder Mystery Revisited: Do Housing Voucher Households Cause Crime?* researchers at New York University's Furman Center tracked voucher holders and their impact on neighborhood crime. Using neighborhood-level data for 10 cities across the nation, the authors, "refute the notion that rising numbers of voucher holders contribute to increasing rates of neighborhood crime... They also found no association between the arrival of voucher holders in a neighborhood and the incidence of crime one year later."

Source: National Low Income Housing Coalition, <http://nlihc.org/article/studies-examine-effects-affordable-housing-crime-patterns>

In Oregon, in residential zones, group homes that serve five or fewer disabled individuals must be treated in the same way that a single-family dwelling is treated.

In Oregon, jurisdictions are required to make licensed residential facilities serving six or more individuals with disabilities a permitted use in any zone where multifamily dwellings are a permitted use.

3. INFO FOR HOUSING PROVIDERS



Developers and providers of affordable and special needs housing face many challenges in getting a project launched and running—finding a site that has a reasonable price tag, patching together development and service funding from multiple sources, conforming to local codes while meeting specialized housing needs and operating a project in a manner that serves residents’ needs holistically while running in the black. And then there are the neighbors.

No one wants to live in constant conflict—not your residents, not the neighbors, not your staff. Understanding your residents’ rights under fair housing is only a small part of successful neighborhood engagement; it also involves human relations, advocacy, and considered judgment about when to accommodate questions and requests and when to draw the line. This quote about working with resistant neighbors from *Thinking Beyond NIMBY* by the Corporation for Supportive Housing offers sound advice and a good starting point for this chapter:

We may depict the NIMBY crowd as narrow-minded, self-interested, sometimes violent home owners who are resistant to reason and uncaring about those less fortunate. While this may be true about

some people in some struggles, more often what underlies resistance to supportive housing are fears—some legitimate, some not. You should try to understand those fears so that you can respond to them appropriately.

Source: Corporation for Supportive Housing, *Thinking Beyond NIMBY*, March 2006

This chapter provides information and guidance on building relationships, responding to concerns, doing reconnaissance, building relationships and choosing a community engagement strategy.



DOING YOUR HOMEWORK

If you are new to a community, your first step is to do some reconnaissance long before your project becomes public. If you have worked in a community for a while but are proposing a new project, you still have homework to do about the specific neighborhood and the approval process that will be involved for this particular project. Below are questions based on a checklist created by Sara Pratt and Michael Allen for the Housing Alliance of Pennsylvania's *Fair Housing Toolkit* (2004) that you can use to guide your reconnaissance efforts.

THE ZONING PROCESS

- Is it a permitted use in the zone, or is additional review required?
- What approvals are likely to be needed for this project?
- What is the usual process for the approvals you need?
- Who will review the application?
- Who will make the decisions?
- What is the likely timeline and costs?
- Who are the real decision makers?
- If you are providing housing for people with disabilities, are you likely to need a reasonable accommodation? What is the process for requesting and obtaining a reasonable accommodation?
- What do other developers say about working in this jurisdiction?



STORIES FROM THE FIELD

At the beginning of a public hearing, an older woman chatted with people waiting in the audience. She looked like everyone's grandmother. She then testified that she was from the area and had a mental illness that had developed when she was in her 40s. At the time, she assaulted someone before she found the appropriate medication for her illness. She's experienced problems finding housing ever since. The neighbors visibly relaxed and empathized. The project moved forward without a hitch.

INFO FOR HOUSING PROVIDERS



THE COMMUNITY AS A WHOLE

- What kinds of housing needs are there in the community?
- Will the proposed project meet those needs in some way?
- What history do affordable and special needs housing proposals have in the community?
- What advocacy groups are active in the community?
- What recent housing and neighborhood issues have been in the news?
- What positions have local media taken on housing development projects?
- What has local government said and done about affordable and special needs housing?

THE NEIGHBORHOOD AROUND THE PROPOSED SITE

- What is the surrounding neighborhood like?
- What types of housing are already in the neighborhood?
- Who are the local neighborhood leaders?
- Has the neighborhood been the site of other recent development, and what was its reaction to the proposed project?
- What are neighborhood needs and concerns?
- What are the neighborhood's organizational, locational and resource assets?
- What is the racial, ethnic, socio-economic and age composition of the neighborhood?

TIP

There are surprise allies; be sure to look for them.



TIP

If you are required to attend a public hearing and you have a potential tenant who is articulate, have them testify at the hearing. Having a sympathetic or even average person testify to their needs may result in lessening any opposition.

LOCAL ALLIES

- Who might they be? Consider community opinion leaders (such as faith-based leaders, educators, civic leaders), advocates and elected officials who may not have a direct role in decision-making on this project (such as state representatives or senators).
- What activities have they recently engaged in that relate to affordable or special needs housing?
- What are their linkages to local government decision makers and neighborhood leaders?

Once you've done your homework, you'll be ready to begin to build community support and create a community engagement strategy that fits your unique circumstances.



STORIES FROM THE FIELD

Early in the development process, a developer of housing for the mentally ill engaged in a community dispute resolution process with the neighbors. The neighbors were able to express their fears and concerns, and the developer was able to waive the outdoor space requirements and create a courtyard for the residents instead, which addressed all parties' concerns.



CREATING A COMMUNITY ENGAGEMENT STRATEGY

Within the affordable and special needs housing community, there are two primary schools of thought about how to approach engaging and working with neighbors and the broader community on the siting, development and opening of a new project. Within these schools of thought, there are many variations on the basic themes. Which approach is best depends on the particular project, notification requirements, the community, existing relationships and the style and beliefs of the housing provider.

The two schools of thought are:

Discreet Approach: If a proposed project is a permitted use (one that is allowed outright, without additional approvals, such as a staffed group home serving five adults with mental health disabilities locating in a neighborhood zoned for single family uses), some housing providers elect to locate in the community without doing neighborhood outreach beforehand. The rationale for this approach is that advance outreach only serves to unnecessarily alarm the community about “what might be,” mobilize opposition, and prolong integration of the residents and the project into the flow of community life.

The downside to this approach is that it may make it more difficult to establish a positive working relationship later on. Neighbors may decide that the housing

provider is sneaky and not trustworthy, and they may ramp up their resistance to the project. At worst, the resentment may spill over and affect how neighbors interact with project residents; on a day-to-day basis, the residents may bear the burden of any ill will unintentionally created by the housing provider. But these negative effects do not always occur, and some housing providers find this approach works well for them.

Some housing providers who follow this approach have found it more productive to speak with neighbors organically, on a one-on-one basis, as they encounter them or if issues arise, than to engage in proactive outreach. They have found that having individual conversations enables staff to address specific concerns or problem-solve around real issues (if there are any) instead of trying to allay fears about how the presence of the new residents might potentially impact the neighborhood.

Some housing providers who take the discreet approach have a strong belief in the rights of people with disabilities or low income households to live in communities of their choice, free of discrimination or disparate treatment. On principle, they may choose to not make any more of an effort to reach out to neighbors than a developer or provider of any other kind of housing.

TIP

Listen to neighbors. They generally have some valid grievances and are frustrated by a process that focuses on something that is not their real concern.



Proactive Community Outreach

Approach: If a proposed project will require neighborhood notification and/or public hearings, many project sponsors will begin community outreach before the official process begins to demonstrate that they intend to be communicative and responsive to neighbors and to head off inaccurate information circulating through the neighborhood grapevine. To an increasing degree, advocates, scholars and lawyers are recommending that developers take a more active role in managing potential local opposition rather than responding to it as it arises.

STORIES FROM THE FIELD

One neighborhood resident was an active member of a local church. The church members handed out flyers and attended every hearing—in support of the housing project for PSRB persons (persons with mental illnesses).





BUILDING LONG-TERM COMMUNITY SUPPORT

If you are planning to work in a community for the long haul, then it is important to invest time and energy on an ongoing basis in both cultivating long-term working relationships with key players and showcasing the positive work that your agency does to the community as a whole. Achieving greater understanding and acceptance involves more than the sum of the outcomes of the skirmishes around specific projects.

There are three primary aspects to this effort:

- 1. Identifying and cultivating key contacts,** such as elected officials, community opinion-makers and others whose support will be needed along the development path or who can influence others who will be important to your project's success.
- 2. Cultivating community understanding** of and support for housing that serves households whose needs are not met by traditional market-rate housing.
- 3. Developing name recognition and support for your agency** as an organization that provides an important, needed service to the community and does it in an exemplary manner.

In Oregon, much work has occurred in recent years around messaging and advocacy for affordable housing through the Oregon Opportunity Network, Neighborhood Partnerships and the Housing Alliance. In some regions, local networks or coalitions have formed, sometimes under the auspices of Continuum of Care partners. Developers of special needs housing have access to the messaging resources of their respective communities. Because of the sophistication and knowledge base that already exists, this chapter will not devote additional space to covering this topic beyond the reminder of the need to constantly build awareness and cultivate well-connected supporters as a way to lay the groundwork for future projects long before they reach the drawing board.



TIP

Flaunt your successes! Bring photos of your well-designed and managed previous housing projects.

COMMON CONCERNS AND HOW TO ADDRESS THEM

When neighbors ask questions or express concerns, it is important to remember that they are likely responding to fear about what might be. Your goal is to get beyond the stereotypes by providing real information and perhaps helping them recall empathetically (in their minds) real people whom they may have known who have experienced some of the life challenges faced by your residents.

Here are some concerns that may to arise in the early stages of neighborhood dialogue and some strategies for addressing them:

Concerns about the impact of a project on property values.

Studies on the impact of affordable housing on nearby property values span four decades. Overall, the studies indicate that rehabilitated housing increased nearby property values, negative effects were more likely to occur when the housing was clustered and located in declining neighborhoods, and that both positive and negative effects were small when compared to other factors driving property values. Well-constructed and managed projects do not drive down property values.



RESOURCES ON MESSAGING AND BUILDING COMMUNITY SUPPORT

Neighborhood Partnerships
www.neighborhoodpartnerships.org

Oregon Housing Alliance Wages and Housing Cost Data by County
www.oregonhousingalliance.org/resources

Public Works
www.publicworks.org

North Carolina Housing Commission's Housing Communications Manual
www.nchousing.org/advocacy/messaging-strategy

Center for Housing Policy's Research Brief on Affordable Housing Messaging:
www.nhc.org/media/files/2013_10_CommsLitReview.pdf

Washington Low Income Housing Alliance Media Advocacy Tools
www.wliha.org/resources/media-advocacy

INFO FOR HOUSING PROVIDERS



Concerns about people who are different in some way and how they will affect the feel of the neighborhood.

The way to respond to this question depends on the type of housing you are providing. Your goal is to help neighbors think beyond stereotypes and see the new neighbors as real, complex people who may, in fact, share some of the same goals they have. With respect to affordable housing, neighbors may know younger people (their children or their children's friends, for example) who have had a hard time finding work paying a living wage and making ends meet. For special needs housing, most people have known someone who has had a developmental or mental health challenge and needed support at some point in their lives. Try to dispel false assumptions with facts and with helping neighbors make a mental connection with people whom they know who have had some of the same life challenges as your residents.

Concerns about crime. A project that is well-managed should not result in issues around crime. Affordable housing providers screen their clients and do background checks just like any other landlord. If the concern is about drug activity, discuss your agency's policy with respect to the possession and sale of illegal drugs. If you are providing a "dry" facility to support people recovering addictions, showcase your agency's commitment to sobriety and its importance to the success of everyone who lives in the housing.

Concerns about living near formerly homeless people or people who have made major mistakes in their lives. The Corporation for Supportive Housing recommends that housing developers not dismiss neighbors' concerns about living near people who have been trapped in homelessness. Some of your residents may have lived lives that involved drugs, crime or violence. But, it is also true that these residents want a different life. If you or other service providers are planning to offer supportive services, talk about how residents will have a chance to live in a safe environment that supports positive, healthy choices. If peer support and accountability are components of your program, mention that as well. While not providing detailed information about your service component, you may find it useful to give residents a broad sense of the kinds of support your project offers.



TIP

Strong partnerships with service providers and 3rd party management is the key to success for special needs housing.

Concerns about residents “acting out” or behaving strangely. If neighbors ask questions like, “What happens if your residents wander into my back yard?”, you might ask them what would typically happen if someone wandered into their back yard. Most likely they will respond that they would ask the person to leave and then call the police or some other authority if the person lingered. You can also give them an agency phone number to contact in the event of an emergency and point out that you are providing them with something most market-rate housing providers do not provide.

Once you have answered all the legitimate questions, then only more invasive and potentially inappropriate ones remain. You will need to make choices about when questions arise from fears that you can dispel with information, and when questions become invasive or harassing. Similarly, you will need to decide when requests about modification in building design, screening, parking and other areas are ones that you are willing to accommodate in a demonstration of being a good neighbor, and when they start to become unreasonable demands.

You may discover that some neighbors want to build positive relationships with your residents but don't have any experience in being around people with special needs. In this instance, you have a careful line to walk between protecting the privacy and fair housing rights of your residents and providing useful information to neighbors who genuinely want to be accommodating. You can talk about how to create a welcoming environment if you stick to generalities and do not discuss particular disabilities or disclose confidential information about your residents.



INFO FOR HOUSING PROVIDERS



REASONABLE ACCOMMODATION FOR HOUSING SERVING PEOPLE WITH DISABILITIES

If you are building housing designed to serve people with disabilities, you are able to request a reasonable accommodation—a modest departure from existing requirements—if needed. Information about reasonable accommodations, including the standard to be used in determining what is reasonable, can be found in the first chapter of the guide.

Do not be surprised if building inspectors or planners are not familiar with the fair housing requirements around reasonable accommodations. Your jurisdiction may not have an established process or application form for you to follow. If this occurs, look at it as an opportunity to help the jurisdiction learn about what is required and craft an efficient and fair process. Start with pointing them to the 2004 Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations under the Fair Housing Act.

Failure to provide reasonable accommodations is a violation of the Fair Housing Act. If this occurs, contact the Fair Housing Council of Oregon for assistance. Your window for filing an administrative complaint is one year and two years for filing a complaint in court.



RESOURCES ABOUT REASONABLE ACCOMMODATIONS

Joint Statement of the Departments of Justice and of Housing and Urban Development on Group Homes, Land Use, and the Fair Housing Act

Joint Statement of the Department of Housing and Urban Development and the Department of Justice—Reasonable Accommodations under the Fair Housing Act, May 17, 2004

www.justice.gov/crt/about/hce/about_guidance.php



DID YOU KNOW?

Failure to provide reasonable accommodations is a violation of the Fair Housing Act. If this occurs, contact the Fair Housing Council of Oregon for assistance.



GOOD NEIGHBOR AGREEMENTS

Good Neighbor Agreements are voluntary agreements between your agency and neighbors. Sometimes they are created with the assistance of a third party convener, such as a facilitator from a Community Dispute Resolution Program. They memorialize the decisions that your agency and the neighbors reached about how to head off potential problems (such as parking conflicts, noise and smoking) and what to do if a problem does occur. They may be signed by you and your neighbors. Compliance is usually voluntary, although it may be possible to bring a civil suit for breach of contract if the agreement conforms to the legal standards for a contract in Oregon.

If a Community Dispute Resolution Program facilitator is involved, it is important to understand that this person's role is to be a neutral convener. It is not her or his role to advocate in behalf of your agency and your clients, no matter how personally sympathetic that person may be to your cause. It is incumbent upon you to make sure that fair housing law is not violated and that your clients' rights under fair housing are protected.



COMMUNITY-BASED DISPUTE RESOLUTION CENTERS IN OREGON

In Oregon, 22 of the state's 36 counties are served by one or more community-based dispute resolution centers that provide a neutral forum for resolving conflict. A current list of centers can be found through Oregon Office for Community Dispute Resolution at the University Of Oregon School Of Law:

www.osbar.org/_docs/public/cable/commdispute.pdf

INFO FOR HOUSING PROVIDERS



KEY CONCEPTS

- **Do your homework.** This includes looking at the neighborhood and the potential impact that this development may have on the neighborhood.
- **Create a community engagement strategy;** either a discreet approach or a proactive community outreach approach, depending on the situation.
- **Build long term community support by cultivating understanding and support for those residents who live in your housing.**
- **Address concerns about the impact of your project on property values, crime, traffic and livability issues.**
- **Address concerns about the types of tenants who will be living in your housing projects; educate and dispel stereotypes about “those people.”**
- **Bring in allies from the general public, social service providers and current tenants.**
- **Look at developing Good Neighbor Agreements.**

CONCLUSION

Developers and providers of affordable/subsidized and special needs housing have unique challenges not faced by market rate developers. To be most effective, it is important to build relationships with elected officials and staff as well as neighborhood residents. Listening and communicating well are two very important skills to use throughout the development process. Developing a strong and appropriate message about the type of housing you are creating and building a community engagement strategy around that message will make a huge difference in the acceptance of your project.



TIP

Have a strategy and be willing to compromise on the things that do not matter as much to the project. For example, if you want the building to be painted blue and the neighborhood residents want it to be green, paint the building green. If you want a 30 unit building, consider initially proposing a slightly larger development.



4. RESOURCES



The information available online on fair housing and inclusive communities continues to expand. Entering the search terms “Fair Housing” and “NIMBY” (which stands for Not in My Back Yard, a term commonly used to describe neighborhood opposition to a project being located in that neighborhood) into a web browser will yield resources which can be scanned to determine which ones are from reliable sources, such as state fair housing agencies, national nonprofits and academic sources.

In this dynamic information environment, a comprehensive list of resources would soon be out of date. Thus, the information in this chapter represents an annotated selection of key resources, including ones used in the development of this guide. While all links are current as of publication of this guide in July 2014, they, too, may change over time.

ESSENTIAL RESOURCES FROM THE DEPARTMENTS OF HOUSING AND URBAN DEVELOPMENT AND JUSTICE

Fair Housing Act, As Amended:
www.justice.gov/crt/about/hce/title8.php

List of Fair Housing Laws from HUD’s Office of Fair Housing and Equal Opportunity:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws

Department of Justice Fair Housing Policy Statements and Guidance:
www.justice.gov/crt/about/hce/about_guidance.php

Department of Justice Overview of Fair Housing Act and Enforcement Measures:
www.justice.gov/crt/about/hce/housing_coverage.php

OREGON-SPECIFIC MATERIALS

City of Portland, Office of Neighborhood Involvement (2012).

Community Residential Siting Resources.

www.portlandoregon.gov/oni/32417

Before it was discontinued in 2012, the Community Residential Siting Program provided guidance to neighbors and housing providers on siting affordable housing and housing for difficult-to-house populations in Portland and Multnomah County. Four practical resources are still available on the website above: information for neighbors, recommended public involvement guidelines, community involvement strategies, and site selection guidelines for post-incarceration facilities. Some of the information references Portland zoning code and may not be applicable elsewhere, but much of the information is relevant throughout the state.

Fair Housing Council of Oregon (2014).

Examining Local Land Use With a Fair Housing Lens: An Evaluation Tool for Planners, Policy Makers and Other Practitioners.

www.fhco.org/pdfs/AFFHfhco1.pdf

A checklist for reviewing zoning codes and current planning practices based on both fair housing laws and Oregon state land use laws and administrative rules.

GENERAL GUIDES

Pratt, Sara and Allen, Michael. (2004).

Addressing Community Opposition to Affordable Housing Development: A Fair Housing Toolkit. Housing Alliance of Pennsylvania.

www.housingalliancepa.org/resources/111

At 80 pages, a very thorough guide to understanding and responding to neighborhood concerns about affordable housing. This guide addresses the following topics: zoning and land use, free speech, community information campaigns and government opposition. The sidebars contain relevant examples, information about best practices, practice-related hints, and detailed information about topics mentioned in the text. The list of resources (10 pages) includes websites, articles and books, and cases. This is a good resource to have bookmarked on your computer.



RESOURCES FOR NEIGHBORS

Tennessee Fair Housing Council. (2003). Good Neighbors, Healthy Communities.
www.tennfairhousing.org/resources

A guide about housing for people with disabilities written for neighborhood residents. Using research findings, it addresses common misconceptions about the impact of group homes and other housing for people with disabilities on neighbors and neighborhoods. It also includes chapters on relevant laws, the rights of neighbors who live near housing for people with disabilities and frequently asked questions.

RESOURCES FOR PUBLIC OFFICIALS

McCartney, Tracey. (2003). Navigating NIMBY: A Public Official's Guide to Neighborhood Living for People with Disabilities. Tennessee Fair Housing Council.
www.tennfairhousing.org/resources

One of the few guides available specifically for elected officials. It includes a clear, logical presentation of the laws and significant cases, myths and truths about people with disabilities and a thoughtful chapter on the role of public officials.

Voelker, Robert. (n.d.). Utilizing the Fair Housing Act to Counteract NIMBY. Shelterforce Online. National Housing Institute.
www.nhi.org/online/issues/fairhousingmonth.html#Resources

A brief but very useful article that describes the kinds of actions by local governments and local officials that courts have found to be in violation of the Fair Housing Act. Includes a list of resources.

RESOURCES FOR HOUSING PROVIDERS

Connelly, Joy. (2005). Yes, in My Back Yard: A Guide for Ontario's Supportive Housing Providers. HomeComing Community Choice Coalition.

www.homecomingcoalition.com

While the laws governing housing choice are different in the US and Canada, the underlying human dynamics are similar. This guide provides step-by-step suggestions for housing developers. Of particular interest are the fifteen predictable objections and how to deal with them.

Corporation for Supportive Housing. (2006). Thinking Beyond NIMBY: Building Community Support for Supportive Housing.

www.csh.org/wp-content/uploads/2012/07/BeyondNIMBYpdf.pdf

A guide for providers of supportive housing—affordable housing with services for people who face complex challenges with daily living. Includes a variety of strategies for overcoming community fears, including ideas for ways to link to outside resources. Concludes with a case study and a list of additional publications.

Housing Assistance Council. (2005). Telling Our Story: Marketing Affordable Housing.

Rural Voices (10) 1.

www.ruralhome.org/storage/documents/voicesspring2005.pdf

The Spring 2005 edition of *Rural Voices*, the publication of the Housing Assistance Council, includes ten articles about how to advocate for affordable housing within communities, with funders and with local residents in rural areas.

John Jay College of Criminal Justice. (2009). In Our Backyard: Overcoming Community Resistance to Reentry Housing.

www.jjay.cuny.edu/TOOL_KIT_1-NIMBY_FINAL.pdf

This guide introduces the magnitude of the challenge of finding housing for people released from jails and prisons. The principal focus is a detailed case study of The Castle, a reentry project undertaken by the Fortune Society in New York City, and the more broadly applicable best practices learned from it. The publication also includes a list of resources related to on reentry housing and related topics.



RESOURCES FOR HOUSING PROVIDERS CONTINUED

OneCPD Resource Exchange (n.d.). **NIMBY Risk Assessment and Decision Tree Tool** (online resource).

<https://onecpd.info/resources/nimbyassessment>

An online resource for developers of housing, with or without supportive services, targeted to homeless individuals. The user completes an online questionnaire about current concerns, and the tool leads to targeted case studies that address the identified issues.

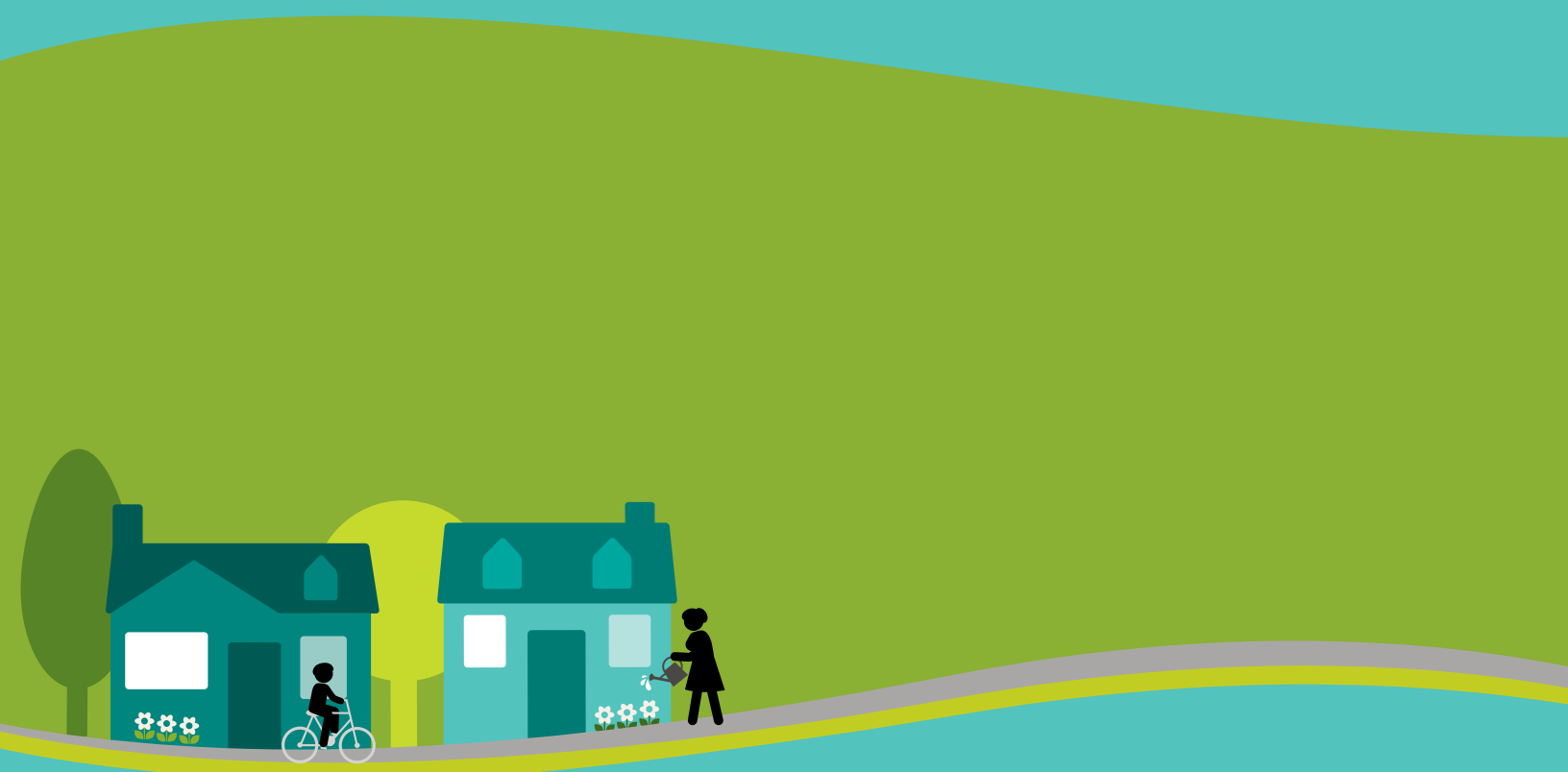
Tennessee Fair Housing Council. (2003). **A Place to Call Home: Addressing Opposition to Homes for People with Disabilities in Tennessee Neighborhoods.**

www.tennfairhousing.org/resources

A guide for providers of housing for people with disabilities. One of the best features of this guide is a thorough discussion of the comparative advantages and disadvantages of high profile and low profile approaches to siting. Other chapters present an overview of relevant laws, myths and truths (backed by research findings) and other issues related to siting, including a discussion of “fair share.”

NOTES





www.fhco.org
(503) 223-8197