



BPDA - Affirmatively Furthering Fair Housing

Zoning Amendment

December 17, 2020 | BPDA Board Meeting



**boston planning &
development agency**

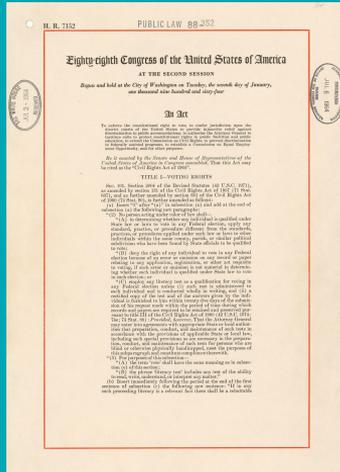
What is Affirmatively Furthering Fair Housing?



boston planning &
development agency

July 2, 1964

Civil Rights Act of 1964



President Lyndon Johnson signs the Civil Rights Act of 1964, legislation to **end discrimination based on race, color, religion, or national origin.**

April 11, 1968

Civil Rights Act of 1968, Title VIII-IX: Fair Housing Act



Intended to protect the buyer or renter of a dwelling from seller or landlord discrimination, this act makes it **unlawful to refuse to sell, rent, or negotiate** with any person because of that person's inclusion in a **protected class.**

July 2015

Affirmatively Furthering Fair Housing (AFFH) Rule



HUD promulgates the AFFH rule, requiring cities which receive federal funding for housing/urban development to **examine whether there are any barriers to fair housing**, housing patterns or practices that promote bias based on any protected class, and to **create a plan for rectifying fair housing barriers.** Required cities to produce Assessment of Fair Housing (AFH) and offered a Local Government Assessing Tool.

2018

HUD moves to remove AFFH Provision

On January 5, 2018 HUD issued a Notice in The Federal Register extending the deadline for submission of local government Assessments Fair Housing (AFH) to the next program year after October 31, 2020 and HUD suspended submission and review of all AFHs not already approved.

In May, HUD moves to **remove the federal mandate and places control over AFFH efforts with local cities and towns.** The local Assessing Tool removed and AFH requirement unclear/delayed.

2019 - Today

Boston's Draft Assessment of Fair Housing (AFH)

The City of Boston is currently reviewing a draft AFH in conjunction with an AFH Advisory Committee.

14 goals and 100+ actions across city agencies.

Although the AFH is no longer a federal requirement, the City remains committed to completing a locally tailored fair housing plan and is in the process of reviewing a final draft.

Assessment of Fair Housing

Affirmatively Furthering Fair Housing in Boston, Massachusetts: Process, Findings and Goals June 2019

Introduction¹

On January 5, 2018 HUD issued a Notice in *The Federal Register* extending the deadline for submission of local government Assessments Fair Housing (AFH) to the next program year after October 31, 2020 and HUD suspended submission and review of all AFHs not already approved. Regardless of this change Boston recognizes that much dedication and work went into the development of several drafts on behalf of affirmatively furthering fair housing in this city. This report reviews Boston's efforts and findings in assessing affirmatively fair housing; it captures important narratives and data that are critical for achieving fair housing for protected classes, and all residents of Boston.

The City is in agreement with housing and community advocates that there is still need for a concise and reader-friendly assessment report and which identifies barriers and potential solutions for affirmatively furthering fair housing.² As reported in the latest edition of *Housing Boston 2030* UPDATE:

"In the original *Housing Boston 2030* document, references to fair housing issues and specific fair housing actions appeared in various sections of the document. The City of Boston believes, however, that the need for coherent and comprehensive treatment of fair housing issues is too central to the work of this housing plan to remain decentralized. All Fair Housing and Equity work will now be aggregated in this new chapter and will be consistent with the analysis, priorities and goals of the Department of Housing and Urban Development (HUD) required Assessment of Fair Housing that DND [Department of Neighborhood Development], the BHA, [Boston Housing Authority] Fair Housing & Equity, and many community organizations and advocates have undertaken for more than a year."³ (p.22)

¹ James Jennings, Professor Emeritus of Urban and Environmental Planning at Tufts University, spearheaded the initiation and completion of this report, but it is primarily based on synthesizing information and data collected and reported and Robert (Bob) Gehret, Deputy Director, Policy Development and Research Division, Department of Neighborhood Development, and by our late friend and colleague, Wilbur E. Commodore, former General Counsel for the Boston Housing Authority; as well as input from a range of organizations working to ensure fair housing for residents in Boston and the Boston region.

² Also see, correspondence from The Affirmatively Furthering Fair Housing Steering Committee to the Department of Neighborhood Development (June 8, 2018) regarding the importance of moving forward with a reader-friendly report that includes assessment of past goals, state of implementation, and new goals based on data and community meetings, as well as information the City has collected about fair housing issues.

July 23, 2020

HUD repeals the 2015 AFFH Provision and associated process



Donald J. Trump
@realDonaldTrump

At the request of many great Americans who live in the Suburbs, and others, I am studying the AFFH housing regulation that is having a devastating impact on these once thriving Suburban areas. Corrupt Joe Biden wants to make them MUCH WORSE. Not fair to homeowners, I may END!

9:20 PM · Jun 30, 2020 · Twitter for iPhone



Ben Carson
@SecretaryCarson

President @realDonaldTrump and I agree that the best run communities are the ones run locally. Today, we are tearing down the Obama Administration's Affirmatively Furthering Fair Housing rule, which was an overreach of unelected Washington bureaucrats into local communities.

10:54 AM · Jul 23, 2020 · Twitter Web App

July 28, 2020



Mayor Marty Walsh ✓
@marty_walsh

Housing is a human right. The only way to battle decades of racist housing policies like redlining is to undo them.

1:25 PM · Jul 28, 2020 · [Twitter Web App](#)

Mayor Marty Walsh ✓ @marty_walsh · Jul 28
In Boston, we will not waver in our commitment to fair housing.
7 45 304

Mayor Marty Walsh ✓ @marty_walsh · Jul 28
We are dedicated to helping residents access housing, and have a fair shot at owning a home.
3 17 172

Mayor Marty Walsh ✓ @marty_walsh · Jul 28
We hold bankers, lenders, property owners and landlords accountable.
4 13 161

Mayor Marty Walsh ✓ @marty_walsh · Jul 28
We make sure residents know their rights. We are working with fair housing advocates on a plan to guide our work moving forward.
1 11 127

Mayor Marty Walsh ✓
@marty_walsh

We will also be filing a zoning amendment that we believe will make Boston the first American city with fair housing requirements written into our zoning code.

1:25 PM · Jul 28, 2020 · [Twitter Web App](#)

Affirmatively Furthering Fair Housing (2015)

*taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means **taking meaningful actions** that, taken together, **address significant disparities** in housing needs and in access to opportunity, **replacing segregated living patterns** with truly **integrated** and **balanced** living patterns, **transforming** racially and ethnically concentrated areas of poverty **into areas of opportunity**, and fostering and maintaining **compliance with civil rights and fair housing laws**. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.*

as provided in 24 CFR 5.152



Assessment of Fair Housing (AFH)

Assessment of Fair Housing (2015)

*the analysis undertaken pursuant to § 5.154 that includes an **analysis of fair housing data**, an **assessment of fair housing issues** and contributing factors, and an **identification of fair housing priorities and goals**, and is conducted and submitted to HUD using the Assessment Tool. The AFH may be conducted and submitted by an individual program participant (individual AFH), or may be a single AFH conducted and submitted by two or more program participants (joint AFH) or two or more program participants, where at least two of which are consolidated plan program participants (regional AFH).*



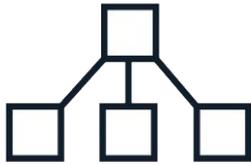
108+ AFFH Actions: City Agencies

- Age Strong Commission
- Boston Housing Authority
- Boston Planning & Development Agency
- Boston Police Department
- Boston Public Health Commission
- Boston Public Schools
- Commission for Persons with Disabilities
- Department of Neighborhood Development
- Health and Human Services
- Intergovernmental Relations
- Office of Economic Development
- Office of Fair Housing and Equity
- Office of Resilience and Racial Equity
- Office of Workforce Development

AGE+



City's Draft Assessment of Fair Housing (AFH) Plan



Increase Housing Availability and Accessibility for Older Adults and People with Disabilities

Expand Housing Choice for Voucher Holders

Use Zoning as a Fair Housing Tool
(First in the nation)

Develop Practices across Agencies that Instill the Use of an Equity Lens

Address Discrimination Against LGBTQIA People and Create LBTQIA Inclusive Housing Opportunities

Increase Resources for Housing and Homelessness

Build and Strengthen Regional Strategies to Create Housing and Further Fair Housing

Reduce the Disparity in Homeownership Rates by Race and Ethnicity

Promote Equitable Access to Housing and Reduce and Eliminate Discrimination, Both Intentional and Non-intentional

Redevelop and Preserve Existing Public and Income Restricted Housing

Create Healthy Homes and Promote Collaboration between Efforts to Address Housing, Health, and Safety

Enhance Fair Housing by Creating Economic Opportunity

Ensure the Equitable Distribution of City Resources Based on Need by Providing Supports for Rent-Burdened Residents and Residents Facing Potential or Actual Displacement

Reduce and Prevent Homelessness

AFFH Zoning Proposal for the City of Boston



boston planning &
development agency

Affirmatively Furthering Fair Housing (2015)

*taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means **taking meaningful actions** that, taken together, **address significant disparities** in housing needs and in access to opportunity, **replacing segregated living patterns** with truly **integrated** and **balanced** living patterns, **transforming** racially and ethnically concentrated areas of poverty **into areas of opportunity**, and fostering and maintaining **compliance with civil rights and fair housing laws**. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.*

as provided in 24 CFR 5.152



Boston City Council Working Sessions

- February 27, 2020
- April 22, 2020
- June 19, 2020
- July 14, 2020
- October 8, 2020



Committee on Government Operations on June 19, 2020

Stakeholder Input

- **Housing advocates**
- **Community Members**
- **NAIOP**
- **Real Estate Development Community**

City Agencies



**Boston Planning
& Development
Agency**



**Boston Housing
Authority**



**Department of
Neighborhood
Development
&
Office of Housing
Stability**



**Mayor's
Commission for
Persons with
Disabilities**



**Office of Fair
Housing and
Equity**



Goals

For proposed projects to take meaningful actions to address displacement and provide further access to housing in a way that is:

- Clear
- Consistent
- Predictable
- Fair

BOSTON TO BECOME FIRST MAJOR CITY IN THE NATION TO INCLUDE FAIR HOUSING REQUIREMENTS IN ZONING CODE

*Zoning amendment represents one step
in City's efforts to strengthen fair
housing practices*

December 9, 2020

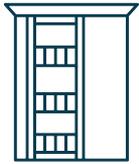


PUBLISHED BY:
MAYOR'S OFFICE

Development Review Process

Development Review processes:

Inspectional Services Dept; Zoning Relief and Design Review as required



<20,000 SF

AND/OR

Fewer than 15 dwelling units

Article 80-E
Small Project Review

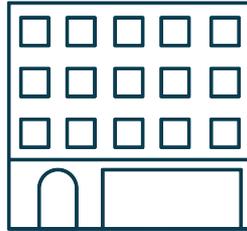


Between 20,000 and 50,000 SF

AND/OR

15+ dwelling units

Article 80-B
Large Project Review



50,000+ SF

AND/OR

Change of use of 100,000+ SF

Article 80-C
PDA Review



1+ acre

AND/OR

Location restricted by neighborhood zoning articles

Article 80-D
IMP Review

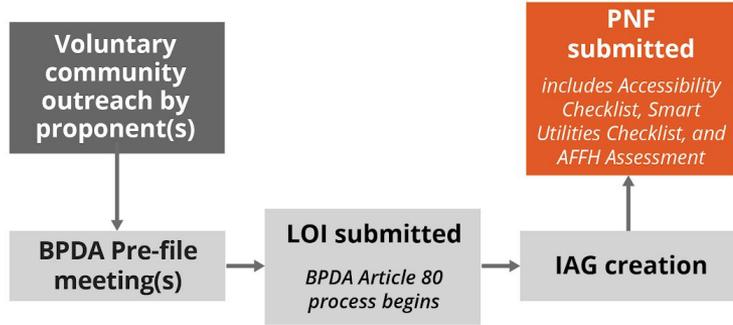


Hospitals, colleges and universities

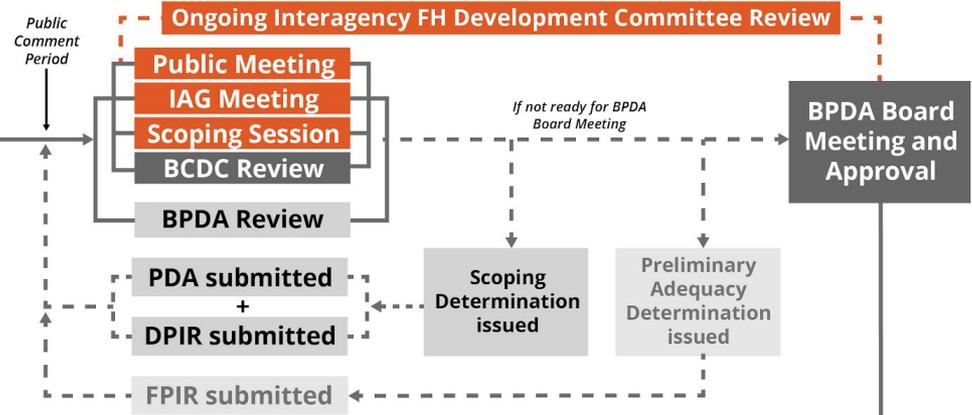
Article 80 Process with AFFH

- AFFH-related process
- Public meetings

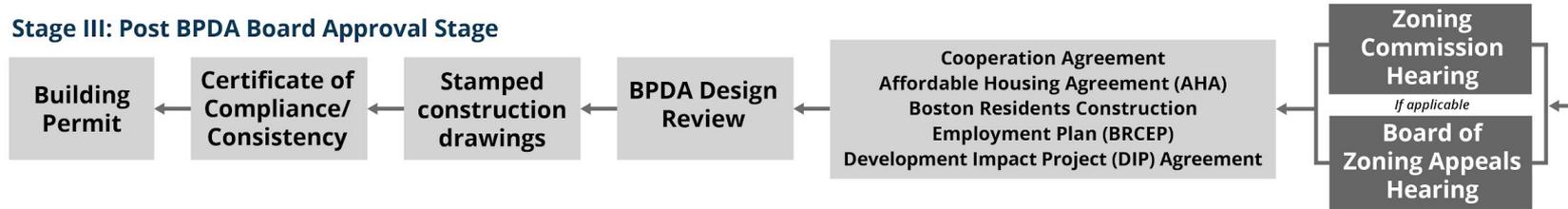
Stage I: Pre-file Stage



Stage II: Under Review Stage



Stage III: Post BPDA Board Approval Stage



Stage IV: Construction and Completion (post-BPDA processes)



Accessibility and Smart Utilities Checklists

The zoning amendment encodes the Accessibility Checklist and Smart Utilities Checklist as a requirements to be included with a Proposed Project's filing



Accessibility Checklist

BPDA board approved in June 2014, updated in March 2017 and Nov 2019

Article 80 | ACCESSIBILITY CHECKLIST – Updated October, 2019

Today's Date:		Your Name and Title:	
1. Project Information: If this is a multi-phased or multi-building project, fill out a separate Checklist for each phase/building.			
Project Name:			
Project Address(es):			
Total Number of Phases/Buildings:			
Primary Contact: <small>(Name / Title / Company / Email / Phone)</small>			
Owner / Developer:			
Architect:			
Civil Engineer:			
Landscape Architect:			
Code Consultant:			
Accessibility Consultant (If you have one):			
What stage is the project on the date this checklist is being filled out?	SPRA / PNF / Expanded PNF Submitted	Draft / Final Project Impact Report Submitted	BPDA Board Approved or other: _____
2. Building Classification and Description: This section identifies preliminary construction information about the project including size and uses.			
What are the dimensions of the project? See below:			
Site Area:	SF	Building Area:	GSF
First Floor Elevation:		Any below-grade space	Yes / No
What is the construction classification?	New Construction	Renovation	Addition Change of Use
Do you anticipate filing any variances with the MAAB (Massachusetts Architectural Access Board) due to non-compliance with 521 CMR?		YES	NO
If yes, is the reason for your MAAB variance: (1) technical infeasibility OR (2) excessive and unreasonable cost without substantial benefit for persons with disabilities? Have you met with an accessibility consultant or Disability Commission to try to achieve compliance rather than applying for a variance? Explain:		(1) OR (2)	

2

Smart Utilities Checklist

BPDA board approved in June 2018

Boston Planning & Development Agency

Smart Utilities Policy for Article 80 Development Review - 2018

The Boston Planning & Development Agency ("BPDA") has worked in close collaboration with numerous internal and external stakeholders – the Mayor's Office of Streets, Transportation and Sanitation, the Mayor's Office of Environment, Energy and Open Space ("EEOS"), the City of Boston Department of Information Technology ("DoIT"), the City of Boston Public Works Department ("DPW"), the Public Improvement Commission ("PIC"), the Boston Water and Sewer Commission ("BWSC"), and the City of Boston Transportation Department ("BTD") – to develop a new model for integrated planning among energy, transportation, water, and communications utilities. The resulting *Boston Smart Utilities Vision* project ("SUV project") aims to transform and improve the "business-as-usual" model of utility design, planning, and coordination. With coordinated planning and improved technologies, utility services can be made more affordable, resilient, equitable, and sustainable.

Four key products of the two year-long SUV project include a *Baseline Report*, a *Cost Benefit Analysis*, the *Smart Utility Standards*, and a new policy calling for the incorporation of Smart Utility Technologies ("SUTs") into new developments. The first three of these work products can be found at: <http://www.bostonplans.org/planning/planning-initiatives/boston-smart-utilities-project>. The fourth work product, the *Smart Utilities Policy for Article 80 Development Review*, is contained herein.

The *Baseline Report* analyzes the cost of doing "business-as-usual" – namely, planning and constructing utilities for the analytical pilot project area using conventional approaches

The *Cost Benefit Analysis* evaluates the financial feasibility of multiple SUTs and concludes that many technologies are financially feasible and cost effective at various scales of real estate development under current market conditions. In addition to the *Cost Benefit Analysis*, several local, large scale developers were consulted for their opinions about the feasibility of a variety of SUTs.

The *Smart Utility Standards* set forth guidelines for planning and integration of SUTs with existing utility infrastructure in existing or new streets, including ten (10) SUTs and cross-section, lateral, and intersection diagrams of an ideal layout for underground services in 40' and 60' right-of-ways. The *Smart Utility Standards* are intended to serve as guidelines for developers, architects, engineers, and utility providers for planning, designing, and locating utilities.

The *Smart Utilities Policy for Article 80 Development Review* presented herein describes which SUTs will be required in new developments of certain size thresholds.

2. Assessment Tool To be submitted with Article 80 Filings

AFFH Assessment

Includes:

- Displacement Risk Analysis
- Historical Exclusion



AFFH Assessment - Large Project/PDA Review

Article 80 | AFFH ASSESSMENT – DRAFT FOR DISCUSSION ONLY

ARTICLE 80 – Affirmatively Furthering Fair Housing (AFFH) Assessment
A Requirement of the Boston Planning & Development Agency (BPDA)
Article 80 Development Review Process

The purpose of this assessment is to provide an opportunity for the City of Boston to anticipate the ways in which a project will contribute to the City's goals of meeting the intent of the Fair Housing Act of 1968 to affirmatively further fair housing by addressing the risk of displacement of residents and small businesses, addressing the historic exclusion of protected classes from particular neighborhoods, and fostering inclusive communities.

This assessment is a collaborative effort with the Boston Planning & Development Agency, the Boston Fair Housing Commission, and the Department of Neighborhood Development and its Office of Housing Stability.

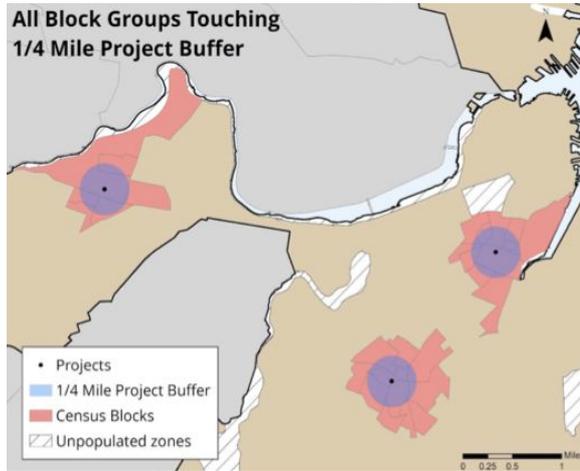
Section 1. Project Overview

Today's Date:	Name and Title:
A. Project Information: If this is a multi-phased or multi-building project, fill out a separate Assessment for each phase/building.	
Project Name:	
Project Address(es):	
Total Number of Phases/Buildings:	
Primary Contact: <small>(Name / Title / Company / Email / Phone):</small>	
Owner / Proponent:	
Attorney:	
Marketing Company:	
BPDA Project Manager:	
BPDA planner:	
Purchase Date of the project site:	
Planning Area (if this applies)	
What stage in the development review process is the Proposed Project in on the date this assessment is being filled out?	<input type="checkbox"/> Large Project Notification Form <input type="checkbox"/> Expanded Large Project Notification Form <input type="checkbox"/> Response to a Supplemental Information Request <input type="checkbox"/> Notice of Project Change <input type="checkbox"/> Resubmission prior to BRA Board consideration <input type="checkbox"/> Other (explain): _____
B. Building Classification and Description: This section identifies preliminary construction information about the project including size and uses.	
What is the construction classification?	New Construction
Project Site Area:	SF
Proposed Project is subject to review under:	Article 80B, Large Project _____ Article 80C, PDA _____
C. Historic Designation	

1

2. Assessment Tool To be reviewed in Article 80 Filings

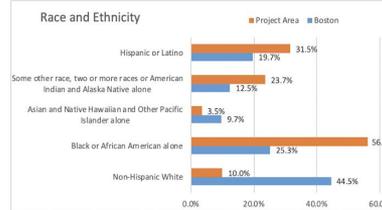
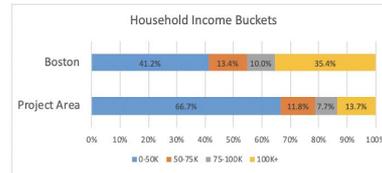
Displacement Risk Analysis



Total Households in Project Area: **4,949**

Household Characteristics:

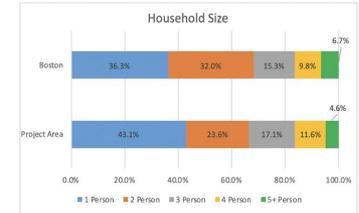
	Percent of Housing Units that are Renter Occupied	Percent of Households spending more than 50% of Household Income on rent	Percent of Housing Units that are subsidized or income-restricted
Project Area	78.7%	30.6%	xx.x%
Boston	65.9%	25.8%	24.3%



Source: American Community Survey 5-Year Estimates (2014-2018)
DND data
BPDA Research Division Analysis

Household Type	Married couple families	other families	non-family, householder living alone	non family, householder not living alone
Project Area	14.3%	33.6%	43.1%	7.9%
Boston	28.0%	20.2%	36.3%	15.5%

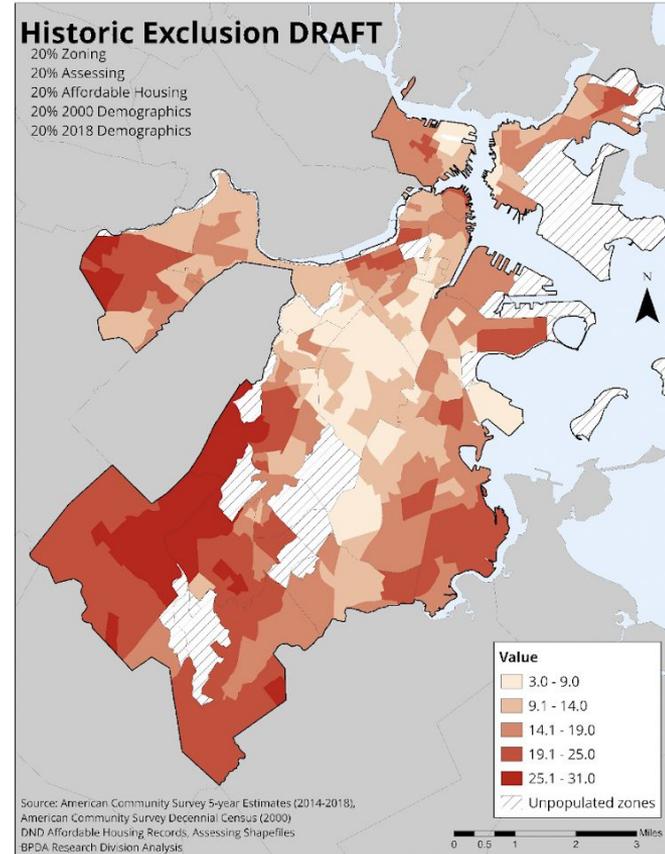
Mix of Units	Studio or 1-Bedroom	2-Bedroom	3-Bedroom	4+ Bedroom
Project Area	30.7%	36.8%	20.9%	11.6%
Boston	31.7%	34.6%	23.1%	10.7%



2. Assessment Tool To be reviewed in Article 80 Filings

Historical Exclusion

Indicator	Weight
Zoning	25% One-family = 1 Two-family = .5 Three-family = .1
Parcel Data	25% One-family = 15% Two-family = 7% Three-family = 3%
Percent White	25%
Percent High Income (Households with income of 150K+)	25%



3. Implementation

Boston Interagency Fair Housing Development Committee (BIFDC)

- Boston Planning & Development Agency
- Commission for Persons with Disabilities
- Department of Neighborhood Development
- Office of Fair Housing and Equity
- Boston Housing Authority

Advisory Role

Provide Recommendations to the BPDA board based on Intervention Options



Intervention Options

Developer to pick one of each

1. Article 80 Options
(BPDA Board Approval)
2. Marketing Options
(Post BPDA Approval)

Intervention Enhancements

3. Supplemental Process Options

3. Implementation - Intervention Options (1 each)

1 Article 80

(BPDA Board Approval)



- Voluntarily provide additional IDP units
- Deeper affordability of IDP units
- Higher number of accessible units
- Higher proportion of family sized units
- Provide all IDP units on-site
- Match or exceed family size units in neighborhood
- Increase density to increase units available to protected classes
- Any other option**

2 Marketing

(Post BPDA Board Approval)



- Preference for % units to rental voucher holders
- Preference for % units to rent-burdened families
- Preference to first time home-buyers
- Allow last month and security deposit to be paid in installments
- Best practices on use of CORI, eviction, credit record in tenant screening and selection
- Best practices to market units to protected classes
- Any other option**

3. Implementation - Intervention Options

3 Supplemental Process



- Local Housing Stabilization Fund
- Voluntarily deed tenants right of first refusal upon conversion
- Voluntarily subsequent owner transfer fee agreement
- Establish or contribute to neighborhood housing Acquisition Opportunity Program
- Restrict % of non-owner occupied units
- Long term flexible lease options for mixed use and local small businesses
- Voluntarily "Flipping fee" agreement
- Any other option**

Intervention Enhancements



Areas of High Displacement Risk

- Diversity preservation preference
- Additional Article 80 process option
- Supplemental Process option

Areas of High Historical Exclusion

- All IDP units on-site
- Additional Article 80 process option
- Supplemental Process option

For PDA's

- Additional Article 80 process option
- Supplemental Process option

Next Steps

Timeline

- December 9: City Council Vote
- **December 17: BPDA Board**
- 2021: Boston Zoning Commission



Mayor Marty Walsh  @marty_walsh · 46m

⋮

Replying to @marty_walsh

I'm pleased to announce that #Boston is expected to become the first city in the nation with fair housing requirements written into its zoning code, following today's @BOSCityCouncil approval.



Boston to become first major city in the nation to i...
Mayor Martin J. Walsh today announced that the City of Boston is expected to become the first maj...
[boston.gov](https://www.boston.gov)

The Boston Globe

Boston may weigh housing discrimination when it considers development proposals

The City Council is set to vote Wednesday on new rules aimed at keeping people from being driven out by high costs.

By **Tim Logan** Globe Staff, Updated December 8, 2020, 5:34 p.m.



Developers behind new construction projects in Boston would be asked to address potential housing discrimination and displacement, under regulations scheduled for a Boston City Council vote Wednesday. DAVID L. RYAN/GLOBE STAFF



Thank you



boston planning & development agency