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**Cc:** [Steven Ponto](#); [Dan Erti](#); [Richard Vanderwal](#); [Julie Aquavia](#)  
**Subject:** Fair Housing  
**Date:** Tuesday, November 15, 2022 12:49:42 PM  
**Attachments:** [Fair Housing Act Comment from league.docx](#)  
[1.pdf](#)

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Council members,

As an item on tomorrow night's agenda includes housing, I thought it would be prudent for me to send you a summary of the fair housing laws so that you understand the law's parameters before taking any action tomorrow evening. I have also attached a legal comment from the League of Wisconsin Municipalities that gives an overview of the law.

**Summary of FHA:**

The Fair Housing Act ("FHA") is protected under both federal and state law. Under federal and state law, one cannot discriminate based on race, color, sex, national origin, religion, disability, or family status. Wisconsin is more broad in that it also prohibits discrimination based on ancestry, marital status, age, sexual orientation, or lawful source of income. The issue of Fair Housing arises for municipalities most often in regard to zoning. Some examples of land use and zoning laws or practices that may violate the FHA include:

- Implementing zoning or land use policies or making decisions that treat housing that may be occupied by protected classes less favorably than housing occupied by other residents
- Blocking group homes for people with disabilities or multifamily or affordable housing in response to neighbors' fears or prejudices about persons with disabilities or racial and ethnic minorities
- Requiring additional studies or procedural steps or unnecessarily delaying decision making when considering a dwelling or development that may be occupied by members of the protected classes
- Refusing to make reasonable accommodations for persons with disabilities in land use and zoning policies and procedures

Even if no personal bias exists on the part of municipal officials, municipal zoning practices or decisions that reflect acquiescence to community bias or fears about members of protected classes may be intentionally discriminatory. For example, in the New Berlin case, (see attached complaint), some of the constituents were racially biased, even though the government officials were not. However, it was still determined to be an FHA violation. Zoning decisions, while neutral on their face, that have an adverse impact on a particular minority group or harm to the community generally by the perpetuation of segregation can demonstrate discriminatory effect.

Another type of discrimination is discrimination against families with children: Some examples include:

- Permitting only one bedroom units in multifamily developments in an attempt to limit the number of children in the school district
- Different use and/or dimensional regulations for age restricted and family housing in the

same district, for example, permitting senior housing to be six stories high while limiting other multifamily housing to three stories

The FHA can be enforced by a private party and the federal government. In the New Berlin case, both the developer and the federal government sued New Berlin . Some other examples of lawsuits are in the following links.

<https://www.keranews.org/news/2022-01-14/arlington-to-pay-almost-400k-in-case-alleging-housing-discrimination-against-families-with-children>

<https://abilitymagazine.com/doj-settles-ada-fair-housing-violations-city-of-jackson-mississippi/>

Penalties include forfeitures, damages, payment of attorney's fees, and requirement to change City policies and ordinances.

To avoid a potential lawsuit, City staff and council members should avoid questions or comments that may demonstrate discriminatory effect on protected classes. Some topics to avoid include those regarding stereotypes, fears about crime or diminution in property values, the prospective tenants' source of income, and how many children will be living in a dwelling unit. Topics to focus on are the comprehensive plan, the neighborhood plan, and compliance with the City's Site Development standards.

If you have any questions, please contact me.

Thanks,



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