

Fair Housing and Land Use Planning & Regulation in Chittenden County, Vermont

A summary of municipal fair housing responsibilities.

A review of municipal plans & land-use ordinances and the *2006 Chittenden County Regional Plan*.

**A set of fair housing checklists for municipal officials to use when revising plans & bylaws
and when considering taking other actions.**

December 2008

**Developed for: CVOEO Fair Housing Project with a grant from HUD
Developed by: Chittenden County Regional Planning Commission (CCRPC) Staff**

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The Concept of Fair Housing

Fair housing laws are intended to ensure that people have equal access to housing that meets their needs. These laws prevent housing discrimination and enable the people who experience it to seek redress for the wrong done to them. Fair housing laws also protect all property owners and residents from being victimized by destructive discriminatory practices (such as steering potential residents to certain neighborhoods) that all-too-often diminish property values and destroy communities.

The federal *Fair Housing Act*¹ prohibits discrimination based upon race, color, religion, gender, familial status, national origin, or disability in the sale, rental, appraisal, financing, or advertising of housing. Vermont's fair housing law² extends these prohibitions to discrimination based upon age, marital status, sexual orientation, or receipt of public assistance. Federal and state agencies and local organizations currently enforce fair housing laws and assist the victims of discrimination.³

Basic Municipal Fair Housing Responsibilities

Fair-housing laws also prohibit the federal, state, and local governments from undertaking actions that purposefully or inadvertently limit housing opportunities in unfair ways. A governmental action can violate fair housing even when officials do not intend to discriminate: A violation may be found when a disparate impact or burden results, even when unintended.

Four categories of municipal actions related to housing (see box, page 2) most frequently trigger a municipality's fair housing responsibilities. Because a discriminatory intent is not required for there to be a fair housing violation, a violation may result when municipal officials merely fail to recognize that they have special fair housing responsibilities and mistakenly undertake regular activities in routine ways. For example, a municipality may routinely (and mistakenly) deny a request to reduce a setback requirement to provide for a wheelchair ramp for a home because the municipality is unaware of its special obligation to make "reasonable accommodations" in such cases (for additional examples see box, page 2). A municipality must meet its fair housing responsibilities even when doing so adds to the cost and time of undertaking an action and even when an action is not supported by federal or State funds.

¹ See Title 42 of the *U.S. Code* (hereinafter, 42 USC) §3604.

² See Title 9 of the *Vermont Statutes Annotated* (hereinafter, 9 VSA) §4503 and generally 9 VSA chapters 139 and 141.

³ See the Federal Office of Fair Housing and Equal Opportunity (800 669-9777 / hearing impaired TTY 800- 927-9275; <http://www.hud.gov/offices/fheo/>); the Vermont Human Rights Commission (800-416-2010; <http://www.hrc.state.vt.us/>); the Champlain Valley Office of Equal Opportunity (802-864-3334 x 102; http://www.cvoeo.org/htm/Housing/fair_housing/fair_housing.html); and the Vermont Fair Housing Council (a project of Vermont Legal Aid; 1-800-889-2047; http://www.vtlawhelp.org/Home/PublicWeb/Library/Index/1690000/1690100/index_html#1690100).

Where Municipal Actions & Fair Housing Intersect

Four broad categories of municipal activities related to housing most frequently trigger municipal fair housing responsibilities:

- 1. Regulations** – When a municipality enacts and administers regulations (e.g., zoning) that affect properties that have been, will be, or could be residential.
- 2. Subsidies** – When a municipality offers financial incentives (e.g., grants, loans, or loan guaranties) or special services (e.g., special infrastructure projects or housing rehabilitation services) to residential property owners or to residents.
- 3. Proprietary Activities** – When a municipality buys, sells, or uses real property, particularly if the property has been, will be, or could be residential.
- 4. Municipal Services** – When a municipality provides services in residential areas or to residents (e.g., infrastructure).

Examples of Municipal Actions Found to be Fair Housing Law Violations

Examples of Regulatory Activities Found to be Violations

- ◆ Excluding multifamily housing in residential zoning districts with mostly white residents while permitting multifamily housing only in residential zoning districts with mostly minority residents.
- ◆ Delays in issuing building permits for residences in a housing development that was generally known to have greater minority ownership than the community-at-large.
- ◆ Requiring the approval of neighboring property owners or residents as a condition for issuing a conditional use permit for a group home.
- ◆ Enforcement of building code regulations disproportionately in developments with predominantly minority residents.
- ◆ Failing to make "reasonable accommodations" for residences for people with disabilities (as required by the 1988 Amendments to the *Fair Housing Act*), as in the following examples:
 - ◇ A city's refusal to allow zoning rear yard setback requirements to be met in the side yard of a residence proposed for mentally ill or recovering substance abusers;
 - ◇ Denial of a special use permit for the conversion of an office building to a residence for persons with AIDs. The city argued that this use most closely fit the zoning ordinance's definition of a "hospice," not permitted in commercial zoning districts.
 - ◇ Attempting to regulate a group home for HIV positive residents as a "chronic nursing home," not permitted in the residential zoning district where the group home was proposed.

Examples of Subsidy Activities Found to be Violations

- ◆ "Steering" minority applicants for §8 housing vouchers to buildings with predominantly minority residents.
- ◆ Using federal Community Development Block Grant funds for water and sewer projects only in areas with predominantly white residents, where areas with predominantly minority residents had a greater need for such projects.
- ◆ Providing misinformation and selectively disposing of applications for a residential rehabilitation and energy conservation program.

Examples of Proprietary Activities Found to be Violations

- ◆ Acquisition and demolition of the only housing occupied predominantly by minority residents as part of a downtown revitalization project where there was no provision of replacement housing.
- ◆ Failure to comply with fair housing regulations in advertising and selling a residence to the highest bidder.
- ◆ Systematic disinvestment in and non-maintenance of existing public housing.
- ◆ Prohibition of "mentally infirm" residents, unwed mothers, and residents dependent on guide dogs from public housing.

Examples of Service Activities Found to be Violations

- ◆ Termination of police protection to minority residents following acts of racial violence.
- ◆ Selection of a school site near the center of an area with predominantly minority residents, instead of at the edge of such area which would promote integrated enrollment.

A municipality may bear significant costs when it is alleged that the municipality has violated the federal *Fair Housing Act* and when the municipality is found to have violated the *Act* (see box, below). When municipal officials review an existing ordinance or consider a new ordinance, expenditure, or action, they can minimize the possibility of such an allegation if they ask, “*What are the fair housing implications of undertaking this action and of undertaking no action?*”

To help municipal officials in Chittenden County to understand the fair housing implications of their proposed actions and to avoid allegations of fair housing violations, this report provides

- ◆ Reviews of the plans and land development regulations of the 19 municipalities in the County for certain desirable and undesirable fair housing features (see pages 7-13) and
- ◆ Fair housing checklists for municipal officials to use when considering whether to undertake and how to undertake the types of activities that are most likely to trigger municipal fair housing responsibilities (see pages 14-20).

These parts of the report are intended to provide guidance and should not be misconstrued as documenting violations of fair housing laws.

Potential Municipal Costs to Defend a Fair-Housing Complaint and If a Fair-Housing Violation is Found

When a municipality defends against a complaint based on the federal *Fair Housing Act*, its costs may include

- ◆ Its own attorney's fees,
- ◆ One-half of the court costs,
- ◆ The costs of diverting municipal officials from their regular duties to assist in preparing a defense, and
- ◆ The loss of community prestige through adverse publicity.

When a municipality is found to have violated the federal *Fair Housing Act*, additional costs may include

- ◆ Nominal or compensatory damages to the complainant (including those for pain & suffering, mental anguish & emotional distress, and humiliation),
- ◆ Punitive damages to the complainant (for intentional & willful violations),
- ◆ Civil penalties:
 - ◇ Up to \$10,000 if it is the violator's first violation,
 - ◇ Up to \$25,000 if the violator has had a previous violation in the past five years,
 - ◇ Up to \$50,000 if the violator has had two or more violations in the past seven years,
 - ◇ Up to \$50,000 if the violator has engaged in a discriminatory “pattern & practice,” or
 - ◇ Up to \$100,000 if the violator previously has been found to have engaged in a discriminatory “pattern and practice.”
- ◆ The complainant's attorney's fees and share of court costs,
- ◆ The loss of eligibility for federal funding of municipal projects and programs,
- ◆ Court-supervised or HUD-supervised oversight of municipal services, and
- ◆ Court-ordered or HUD-ordered municipal expenditures for projects and programs to accomplish specific objectives.

Affirmatively Furthering Fair Housing

When a municipality obtains funds provided by the U.S. Department of Housing and Urban Development (HUD) including HUD pass-through funds from the State (such as CDBG), the municipality must certify that it “*affirmatively furthers fair housing.*”⁴ Although the term “affirmatively furthering” is not specifically defined by statute, HUD interprets the term as calling upon a municipality to take steps to *prevent* fair housing violations through activities such as:

- ◆ Analyzing and eliminating housing discrimination in the jurisdiction;

⁴ See *Grant Application Guide and Instructions*, 2006, Vermont Community Development Program, Vermont Agency of Commerce and Community Development, page 10.

- ◆ Promoting fair housing choice for all persons;
- ◆ Providing opportunities for inclusive patterns of housing occupancy;
- ◆ Promoting housing that is structurally accessible to and usable by all persons, particularly persons with disabilities; and
- ◆ Fostering compliance with the nondiscrimination provisions of the Fair Housing Act.⁵

In 2007, a federal district court held that a non-profit group could sue a county under the federal False Claims Act and allege that the county was not honoring the certifications the county made in prior CDBG grant agreements that the county would affirmatively further fair housing.⁶

Vermont's 2005 – 2010 HUD Consolidated Plan for Housing and Community Development Programs includes an "Analysis of Impediments to Fair Housing Choice."⁷ An "impediment" to fair-housing choice is any action, omission, or decision that restricts, or has the effect of restricting, the availability of housing choice on the basis of factors prohibited by Vermont's *Fair Housing Act* (see box, below).

Impediments to Fair Housing Choice in Vermont

1. Lack of **Affordable Housing**
2. **Rental Housing** Units in Poor Condition
3. Lack of **Accessible Housing**
4. **Zoning** Ordinances that Require **Large Lots**
5. **Zoning** Ordinances that Do Not Allow for **High Density Residential Uses**, Including **Multi-Family & Mobile Home** Uses
6. Lack of **Awareness of Fair Housing Laws & Rights**
7. Need to Strengthen **Fair Housing Requirements for Municipal Grantees** of HUD Community Development Block Grant Funds
8. **Discrimination in Rental & Sales Markets**
9. Lack of **Public Transportation** Options

SOURCE: J-Quad & Associates. "State of Vermont: Analysis of Impediments to Fair Housing Choice." VT DHCA; 2006. Pages 2-25.

Of the nine impediments to fair housing choice identified for Vermont, four impediments are directly related to municipal planning and land-development regulation (Impediments 1, 3, 4, and 5). A municipality can undertake (alone or in partnership with other communities or organizations) activities to further fair housing (see box, page 5).

This report attempts to aid the municipalities of Chittenden County to affirmatively further fair housing in their activities by providing:

- ◆ Reviews of municipal plans and land development regulations for certain desirable and undesirable fair housing features (see pages 7-13) and
- ◆ Fair housing checklists for municipal officials to use when considering whether to undertake and how to undertake the types of activities that are most likely to trigger municipal fair housing responsibilities (see pages 14-20).

These parts of this report are intended to provide guidance and should not be misconstrued as documenting failures to affirmatively further fair housing.

⁵ See *Fair Housing Planning Guide, Vol. 1*; HUD Office of Fair Housing & Equal Opportunity; 1996; pages 1-1 to 1-3.

⁶ See *United States of America ex rel. Anti-Discrimination Center of Metro New York v. Westchester County, New York* --- F.Supp.2d ----, 2007 WL 2012901 (S.D.N.Y.; July 13, 2007; No. 06 CIV 2860 DLC).

⁷ J-Quad & Associates. "State of Vermont: Analysis of Impediments to Fair Housing Choice." VT Dept. of Housing and Community Affairs; 2006 (posted at http://www.dhca.state.vt.us/Housing/2006%20AI/AI_2006Section4.pdf). The report examines how public and private conditions affect fair-housing choice in the State. To continue to receive HUD funds, Vermont must certify that it will affirmatively advance fair housing. To accomplish this, it must demonstrate progress in undertaking remedial actions that address the impediments identified in the "Analysis of Impediments."

Municipal Activities to Further Fair Housing

- 1. Land-Use Policy and Regulation.** After a municipality has established a community development vision in the policies of its adopted plan, the municipality may adopt bylaws to implement that vision. Municipal officials should ensure that the community's vision on paper and its implementation in practice further fair housing. Policies, regulations, and practices that are not fair housing violations still may be impediments to housing choice. This report focuses on this activity.
- 2. Education and Outreach.** Municipalities can clearly state support for fair housing in all policies and activities and participate in programs to educate
 - ◆ Municipal officials, developers, real estate agents, and others of their fair housing obligations and
 - ◆ Local residents of the housing that is available and the avenues to follow when they believe they have been the victims of discrimination and that combats NIMBYism and the resistance of some residents to certain types of housing. Educational materials should incorporate principles of accessible formatting (see box, below).
- 3. Monitoring Practices.** Municipalities can gather primary and secondary data useful in identifying fair housing impediments and violations and in monitoring the practices of lenders, housing providers, the local real estate market and others, thereby encouraging all actors to obey the law in their practices.
- 4. Investigative Testing and Auditing.** Municipalities can assist in these special monitoring activities that focus on specific parties (such as recording differences in a landlord's reaction to an undercover prospective tenant and to a second undercover person who is virtually identical save for being a member of a different race).
- 5. Enforcement.** A municipality can adopt and enforce its own fair housing regulations, perhaps that are substantially equivalent to federal and state fair housing laws. However, municipalities should carefully consider the time and resources involved in administering (e.g. accepting and investigating fair housing complaints) and enforcing these regulations.
- 6. Promoting Desegregation of Public Housing and Increasing Geographic Choice in Housing.** While not applicable to many Vermont municipalities, these two areas of activity are ones in which municipal officials can assert leadership.

SOURCE: Vermont Association of Planning and Development Agencies (VAPDA), "Examples of Activities to 'affirmatively further fair housing,'" April 2002, (posted at <http://www.ccrpcvt.org>).

Accessible Formatting

To ensure that your fair housing outreach materials are accessible, the Vermont Center for Independent Living recommends the following formatting tips:

1. Body text should be in
14 point Verdana.
2. Headings should be in
16 or 18 point, Bold.
3. Do not use colored fonts; black is best.
4. Do not use dark paper; white or light tan is best.
5. Use lots of "white space."
6. If possible, double space between sentences and triple space between paragraphs.
7. Use graphics only for decoration, unless you use universally designed symbols.
8. Prepare some copies in alternative formats, e.g. Braille, audio tape, and large print.
9. Language should be clear & concise. Write at a 4th grade level.

The 2006 Chittenden County Regional Plan

The 2006 Chittenden County Regional Plan⁸ supports fair housing and municipal activities to affirmatively further fair housing.

- ◆ The *Regional Plan's* Vision Statement (page 1.1) states that Chittenden County should be a place with "...housing opportunities for all income levels, ages, and special needs, built through consistent, efficient, and equitable review processes;"...
- ◆ The *Regional Plan's* Housing chapter
 - ◇ Specifically discusses the importance of addressing housing discrimination (page 7.13) and provides sources of information about fair housing (page 7.18);
 - ◇ Discusses the importance of addressing issues related to housing opportunities, such as affordable housing (page 7.10), homelessness (page 7.11), housing for moderate income households (page 7.12), and housing for seniors and people with special needs (page 7.12);
 - ◇ Establishes housing targets that forecast the need for housing that can be afforded by households with different incomes, both countywide and for each municipality (page 7.6);⁹ and
 - ◇ Establishes the following policies that relate to fair housing (pages 7.16-7.17):
 1. All types of households should have adequate opportunities for decent, affordable housing throughout Chittenden County.
 4. Municipal plans should assess the community's ability to meet the 2010 Housing Targets, identify any local barriers to housing production that prevent attainment of the Targets, and develop programs of local actions to address those barriers.
 5. Municipalities and the State of Vermont should evaluate development regulations and review procedures to reduce duplication in permitting, lack of coordination in local and State reviews, and unnecessary requirements that are barriers to housing production, while protecting the environment, historic structures, settlement patterns, and the overall quality of life.
 6. Municipalities should review and revise community plans, capital programs, and regulations to assess where residential development can be accommodated at increased densities in appropriate areas.
 7. Municipalities should encourage housing at the maximum densities allowed by local plans and regulations.
 9. Chittenden County's for-profit, non-profit, and public sector housing stakeholders should work collaboratively to address the County's housing needs.

State law establishes that Vermont's regional planning commissions and the regional plans that they prepare are advisory.¹⁰ The 2006 *Regional Plan's* Introduction (page 1.15) emphasizes that planning in Chittenden County should be a collaboration between CCRPC, member municipalities, other organizations, and the public:

In a metropolitan area like ours, the economy, environment, and sense of community are the products of many individual actions and decisions. The choices we make as individuals have immediate and cumulative impacts on our neighbors and on our collective well being. Collaborative planning helps to coordinate those choices so that they support one another.

If collaborative planning is to be successful in promoting the appropriate development of the County, CCRPC Commissioners, municipal officials, members of regional boards, as well as business, nonprofit, and community leaders should understand, value, and respect each other's special roles and responsibilities in this planning partnership:

- ◆ *Regional planning works best when it establishes general policies addressing fundamental matters that affect the well being of many communities, rather than attempting to dictate decisions best made by local leaders, specialized boards, or private enterprise and individuals.*
- ◆ *Municipal planning works best when it establishes municipal policies that suit local needs and circumstances, while advancing outcomes that benefit the region...*

As a part of this planning collaboration, CCRPC will advocate that all 19 of its member municipalities use the checklists in this report as tools to address impediments to fair housing and barriers to affordable housing and to affirmatively further fair housing.

⁸ Adopted in October 2006, the 2006 Chittenden County Regional Plan is posted online at <http://www.ccrpcvt.org>. Hardcopies and digital copies on DVDs of the *Regional Plan* also are available upon request from CCRPC.

⁹ See <http://www.ccrpcvt.org/vertical/Sites/%7BB8DFDB70-7812-4FAE-9861-8A26C79323B6%7D/uploads/%7BFDD3161E-2831-402E-8EAD-352586D77937%7D.PDF>.

¹⁰ 24 VSA 4345a, 4347, and 4348a.

Municipal Plans and Bylaws

This section of the report reviews the plans and land development regulations of the 19 municipalities in Chittenden County in order to alert municipal officials so that they may undertake actions that allow them to avoid accusations of fair housing violations and to certify that their community is affirmatively furthering fair housing. These reviews are intended to provide guidance and should not be misconstrued as documenting violations of fair housing laws or failures to affirmatively further fair housing. Each review identifies

- ◆ Desirable Fair Housing Features – Having these features evidences official support for eliminating potential regulatory barriers to affordable housing and impediments to housing opportunity.
- ◆ Potentially Undesirable Fair Housing Features – Having these features could be construed as evidencing a lack of official support for eliminating potential regulatory barriers to affordable housing and impediments to housing opportunity.

The municipalities in Chittenden County vary greatly in their community development policies, local housing demand and supply, development management bylaws, and available resources for municipal staff and consultants. This section’s reviews of municipal plans and bylaws are not intended to suggest that all 19 municipalities must follow the same approach to satisfying their fair housing responsibilities. Instead, these reviews identify *possible* actions. Local officials should decide the types of measures and the ways measures should be undertaken that are most appropriate for that community to demonstrate it is affirmatively furthering fair housing.

All 19 municipalities in Chittenden County have adopted a plan.¹¹ The desirable fair housing features of municipal plans identified in Table 1 (see page 9) include

- ◆ Data on
 - ◇ Demographics – Does the plan document the presence of people in the community and the region who are more likely to experience discrimination that is prohibited by fair housing laws?
 - ◇ Housing Supply – Does the plan document the types of housing in the community and region?
 - ◇ Housing Costs – Does the plan document the costs of owning and renting housing in the community and region and the ability of households to own and rent housing?
- ◆ Identification of
 - ◇ Housing Discrimination Complaints – Have people filed complaints of housing discrimination with federal, State, and local agencies?
 - ◇ Areas of Concentration – Does the plan identify the existence of areas with a significant number of households protected by fair housing laws (or explicitly state the non-existence of such areas)?
 - ◇ Needed Bylaws Revisions – Does the plan identify needed revisions to land development bylaws, based on a systematic review of whether there are regulatory barriers to affordable housing and impediments to housing choice?
- ◆ Policy Statements in Support of Key Housing Needs – Does the plan contain official support for
 - ◇ Fair Housing,
 - ◇ Affordable Housing,
 - ◇ Variety of Housing / Multifamily Housing,
 - ◇ Housing for Seniors & People with Special Needs (particularly accessibility), and
 - ◇ Accessory Dwelling Units?

Table 2 identifies certain *potentially* undesirable fair housing features of municipal plans (see page 10):

- ◆ Potentially Harmful Findings, Conclusions, or Policy Recommendations – Does the plan contain findings, conclusions or policies that state or imply
 - ◇ The absence of housing needs or remedies to such needs when this is not substantiated by facts,
 - ◇ Official support for curtailing housing opportunities, or

¹¹ The City of Burlington and the Town of Charlotte also have each established a municipal housing trust fund (a reserve fund that may accumulate revenues over more than one fiscal year that are used to support various housing activities).

- ◇ Official support for discouraging certain types of (or all) new residents.
- ◆ Lacking a Program of Local Actions – Is there a program that 24 VSA 4382 (a) (10) requires to be in all municipal plans: “A housing element that shall include a recommended program for addressing low and moderate income persons' housing needs as identified by the regional planning commission...”?¹²

Table 1 illustrates that these municipal plans generally recognize the importance of having the community provide opportunities for a variety of housing needs (especially housing affordability) by including background data, adopting policies, and recommending implementation measures (especially needed bylaw features) addressing these needs. Moreover, Table 2 shows that these plans rarely have features that potentially could evidence a lack of support for fair housing.

However, these plans (with the exception of the Burlington plans) devote less attention specifically to preventing housing discrimination. This may be because Vermont’s municipal planning enabling acts (Chapter 117) do not call for municipal plans to have such provisions and only recently has the State’s *Consolidated Plan* highlighted the importance of municipal actions to affirmatively further fair housing and remove impediments to fair housing choice. A municipality seeking to demonstrate that it does affirmatively further fair housing should consider including such provisions into its plan.

All of the municipalities in Chittenden County have adopted one or more land development regulations. Some municipalities were in the process of updating one or more regulations when this report was being prepared. In these cases, the review included both the existing and proposed draft regulations. The desirable fair housing features of municipal land development regulations identified in Table 3 (see page 11) include

- ◆ Having Certain Types of Land-Development Regulations – Does the municipality have
 - ◇ Zoning, ◇ Planned Residential Development /
 - ◇ Subdivision Regulations, and Planned Unit Development Regulations?
- ◆ Providing Measures that Promote Housing Affordability – Do the municipality’s bylaws provide for each of the following specific measures that help to reduce housing costs:
 - ◇ Density Bonuses (for specific types or methods of residential development),
 - ◇ Cluster Development (that reduces site planning and infrastructure costs),
 - ◇ Variety of Housing Types (including multifamily),
 - ◇ Variety of Lot Sizes,
 - ◇ Accessory Dwelling Units, and
 - ◇ Waivers or Reductions of Permit Review Fees or Impact Fees (for affordable housing or other targeted housing)?

The *potentially* undesirable fair housing features of municipal land development regulations identified in Table 4 (see pages 12-13) include

- ◆ Predominantly Large Minimum Lot Sizes – Lots are required to be at least two acres per dwelling unit in most of the municipality and
- ◆ Provisions Related to Housing that Possibly Do Not Comply with State Statutes
 - ◇ Mobile Homes, Modular Housing, or Prefabricated Housing (see 24 VSA 4412 (1) (B)),
 - ◇ Mobile Home Parks (see 24 VSA 4412 (1) (C)),
 - ◇ Multifamily Housing (see 24 VSA 4412 (1) (D)),
 - ◇ Accessory Dwelling Units (see 24 VSA §4412 (1) (E) and (F)) and
 - ◇ Residential Care and Group Homes (see 24 VSA §4412 (1) (G)), and
 - ◇ .Child Care Homes (see 24 VSA §4412 (5)).

¹² CCRPC has developed a set of housing targets for each municipality that serve as a starting point for each community to identify the measures that the municipality believes would address locally defined barriers to housing (see note 8).

Table 1
Desirable Fair Housing Features
of the Plans of the Municipalities in Chittenden County¹
(✓ = Plan has this Feature)

Municipality	Adequate Data on Local ²			Identifies Existence or Absence of			Findings, Conclusions, or Policies Expressly Supportive of				
	Demographics	Housing Supply	Housing Costs	Discrimination Complaints	Areas of Concentration	Needed Bylaw Tools	Fair Housing	Affordable Housing	Variety of Housing / Multifamily Housing	Senior/ Special Needs Housing	Accessory Dwelling Units
Bolton		✓	✓			✓		✓	✓	✓	✓
Buel's Gore						✓		✓			✓
Burlington ³	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Charlotte	✓	✓	✓			✓		✓	✓	✓	
Colchester		✓	✓			✓		✓	✓	✓	✓
Essex Junction		✓	✓			✓		✓	✓	✓	
Essex Town						✓		✓	✓	✓	✓
Hinesburg		✓	✓			✓		✓	✓	✓	
Huntington	✓		✓			✓		✓		✓	✓
Jericho		✓	✓			✓		✓	✓	✓	✓
Milton		✓	✓			✓		✓	✓	✓	
Richmond		✓	✓			✓		✓	✓	✓	✓
St. George		✓	✓			✓	✓	✓	✓	✓	✓
Shelburne ⁴		✓	✓			✓		✓	✓	✓	✓
South Burlington		✓	✓			✓		✓	✓	✓	
Underhill ⁵			✓			✓		✓	✓		✓
Westford			✓					✓	✓	✓	
Williston		✓	✓			✓		✓	✓		✓
Winooski ⁶	✓		✓			✓		✓	✓		✓

¹ Before making any conclusions based on the following analyses, readers should consult with municipal officials about any proposed or adopted revisions of that municipality's plan and research whether the relevant State and federal statutes have been revised.

² The plans of slightly more than half of the municipalities assessed the significance of local data by relating it to data for neighboring municipalities, the region, or the State.

³ This review for the City of Burlington included both the *2008 Municipal Development Plan* and the *2008 Consolidated Plan for Housing and Community Development*.

⁴ This review for the Town of Shelburne included both Volumes I & II of the *Shelburne Town Plan 2007*.

⁵ This review for the Town of Underhill included both the *2004 Town Plan* and the *2004 Town Profile*.

⁶ This review for the City of Winooski examined the City's *2003 Municipal Development Plan*.

Table 2
Potential Opportunities to Improve Fair Housing Features
in the Plans of the Municipalities in Chittenden County¹

(✓ = Plan has this Feature)

Municipality	Findings, Conclusions, or Policies Implying			Lacking a Program of Local Actions
	Absence of Housing Needs or Remedies to Housing Needs	Actions that Promote Certain Housing Opportunities are Disfavored	Certain Types of Residents (or Any New Residents) are Disfavored	
Bolton			✓ ²	
Buel's Gore	✓ ³			
Burlington ⁴				
Charlotte		✓ ⁵		
Colchester				
Essex Junction				
Essex Town				
Hinesburg				
Huntington				
Jericho				
Milton				
Richmond				
St. George				
Shelburne ⁶				
South Burlington				
Underhill ⁷				✓ ⁸
Westford	✓ ⁹			✓ ⁸
Williston				
Winooski ¹⁰				✓ ⁸

¹ Before making any conclusions based on the following analyses, readers should consult with municipal officials about any proposed or adopted revisions of that municipality's plan and research whether the relevant State and federal statutes have been revised.

² Educational & Childcare Goal "6.3 a" (page 30) disfavors residential growth that would result in overcrowding of the Smilie School beyond its current capacity, but the plan also acknowledges (page 28) the possibility of expanding the Smilie School.

³ The Plan states (page 9), "Because of Buel's Gore's small size and the scarcity of land suitable for building, extensive, much in the way of additional housing is not practical."

⁴ This review for the City of Burlington included both the 2008 *Municipal Development Plan* and the 2008 *Consolidated Plan for Housing and Community Development*.

⁵ The Plan states (page 24), "Because the Town's desire is to remain rural, the Town believes that, with the exception of affordable and moderate income housing, the creation of new housing is not a goal." Section 4.6.10 "Cost of Government and Schools" (pages 85-86) also could possibly be used to support a claim that a Town policy, decision, or action denying certain residential development constituted a violation of the *Fair Housing Act*.

⁶ This review for the Town of Shelburne included both Volumes I & II of the *Shelburne Town Plan 2007*.

⁷ This review for the Town of Underhill included both the 2004 *Town Plan* and the 2004 *Town Profile*.

⁸ This municipal plan was adopted prior to CCRPC's endorsement of housing targets in November 2004.

⁹ The Plan (page 8) states, "While there is probably little Westford can do to actively create affordable housing, short of going into the development business, it can work to gain a better understanding of the problem as it exists in Westford. The Town can also work with developers of larger projects to encourage the creation of affordable units by allowing density bonuses as an incentive."

¹⁰ This review for the City of Winooski examined the City's 2003 *Municipal Development Plan*.

Table 3
Desirable Fair Housing Features
of the Land Development Regulations of the Municipalities in Chittenden County ¹
(✓ = Bylaws have this Feature)

Municipality	Has Regulations			Provides Housing Affordability Measures ²						
	Zoning	Subdivision	PRD / PUD	Density Bonuses	Cluster Development	Variety of Housing Types	Variety of Lot Sizes	Accessory Dwelling Units	Inclusionary Zoning	Reduced Fees
Bolton	✓	✓	✓	✓	✓	✓	✓	✓		
Buel's Gore ³	✓							✓		
Burlington	✓	✓	✓	✓		✓	✓	✓	✓	✓
Charlotte	✓	✓	✓	✓	✓	✓	✓	✓		✓
Colchester	✓	✓	✓	✓	✓	✓	✓	✓		
Essex Junction	✓	✓		✓		✓	✓	✓		
Essex Town	✓	✓	✓	✓	✓	✓	✓	✓		
Hinesburg	✓	✓	✓	✓	✓	✓	✓	✓		
Huntington	✓	✓	✓	✓	✓		✓			
Jericho ⁴	✓	✓	✓	✓	✓	✓	✓	✓		
Milton	✓	✓	✓	✓	✓	✓	✓	✓		✓
Richmond ⁵	✓	✓	✓		✓	✓	✓	✓		
St. George	✓	✓	✓	✓	✓	✓	✓	✓		
Shelburne ⁶	✓	✓	✓	✓	✓	✓	✓	✓		✓
South Burlington	✓	✓	✓	✓	✓	✓	✓	✓		
Underhill	✓	✓	✓					✓		
Westford	✓	✓	✓	✓	✓	✓		✓		
Williston	✓	✓	✓	✓	✓	✓	✓	✓		✓
Winooski ⁷	✓	✓	✓		✓	✓	✓			

¹ Before making any conclusions based on the following analyses, readers should consult with municipal officials about any proposed or adopted revisions of that municipality's bylaws and research whether the relevant State and federal statutes have been revised.

² In addition, this review found that no municipality provides expedited procedures for reviewing proposed developments containing housing that addresses a need identified by the community (such as affordable housing or senior housing).

³ This review examined both the Gore's existing 2004 zoning bylaw and the July 18, 2008 draft of the proposed new zoning bylaw.

⁴ This review examined both Jericho's existing bylaws and the September 2008 draft of the proposed new bylaws.

⁵ This review examined both Richmond's existing zoning and subdivision bylaws and the September 26, 2008 drafts of the proposed zoning and subdivision bylaws.

⁶ This review examined both Shelburne's existing bylaws and the September 2008 draft of the proposed new bylaws.

⁷ The City expects to amend its bylaws in 2009.

Table 4
Potential Opportunities to Improve Fair Housing Features
of the Land-Development Regulations of the Municipalities in Chittenden County¹
(✓ = Bylaws have this Feature)

Municipality	Predominantly Large Minimum Lot Sizes	Provisions to Review ²					
		Mobile Homes	Mobile Home Parks	Multifamily Housing	Accessory Dwelling Units	Group Homes	Child Care Homes
Bolton	✓						
Buel's Gore ³	✓		✓ ³	✓ ³	✓ ³	✓ ³	✓ ³
Burlington							
Charlotte	✓				✓ ⁴		
Colchester							
Essex Junction					✓ ⁵	✓ ⁶	
Essex Town					✓ ⁷		
Hinesburg	✓					✓ ⁸	
Huntington	✓	✓ ⁹	✓ ⁹	✓ ⁹	✓ ⁹	✓ ⁹	✓ ⁹
Jericho ¹⁰	✓		✓ ¹¹		✓ ¹²	✓ ¹³	
Milton	✓						
Richmond ¹⁴					✓ ¹⁵	✓ ¹⁶	
St. George	✓				✓ ¹⁷		
Shelburne ¹⁸	✓						
South Burlington					✓ ¹⁹		
Underhill	✓	✓ ²⁰	✓ ²⁰			✓ ²⁰	✓ ²⁰
Westford	✓	✓ ²¹					
Williston							
Winooski ²²					✓ ²²	✓ ²²	✓ ²²

¹ Before making any conclusions based on the following analyses, readers should consult with municipal officials about any proposed or adopted revisions of that municipality's bylaws and research whether the relevant State and federal statutes have been revised.

² 24 VSA 4412 (1) (A) also prohibits a bylaw from having the effect of excluding housing that "...meets the needs of the population as determined in the housing element of the municipal plan as required under (24 VSA 4382(a) (10))." No bylaw had this defect nor a condition or standard that clearly violated fair housing laws (such as a prohibition of households whose members have characteristics protected by fair housing laws).

³ This review examined both the Gore's existing 2004 zoning bylaw and the July 18, 2008 draft of the proposed new zoning bylaw. Gore officials are working to rectify these features in the final version of the amended bylaw.

⁴ Section 4.2 does not permit accessory dwelling units in the Shoreland Seasonal Home Management District. The Town owns the land in this zoning district, allows only seasonal housing, and does not authorize any new housing to be built.

⁵ Section 502 L. establishes procedures for authorizing an Accessory Dwelling Unit and section 721 B. 3. establishes a criterion for an Accessory Dwelling Unit that should be reviewed for compliance with 24 VSA 4412 (1) (E).

⁶ Section 717 establishes requirements for a Family Care Facility. Subsection 201 C. 81. defines Family Care Facility as having seven or more persons. This should be reviewed for compliance with 24 VSA 4412 (G) which establishes that such a state-licensed facility serving not more than eight persons must be considered by right to constitute a permitted single-family residential use.

⁷ Section 4.1 (A) authorizes Accessory Dwellings in any district in which a single family residence is allowed. This should be reviewed for compliance with 24 VSA 4412 (1) (E) which prohibits a bylaw from having the effect of excluding as a permitted use one Accessory Dwelling unit for any owner-occupied single-family dwelling.

⁸ Section 2.1 establishes that only uses listed as permitted uses or conditional uses are authorized and the zoning bylaw does not list a use equivalent to a Residential Care Home or Group Home. This should be reviewed for compliance with 24 VSA 4412 (1) (G).

⁹ Section 5 establishes that only uses listed as permitted uses or conditional uses are authorized and the zoning bylaw does not include in the lists of permitted uses and conditional uses Mobile Home, Mobile Home Park, Multifamily Dwelling, Accessory Dwelling Unit, Group Home, or Day Care Home, even though many of these uses are defined in Section 16. B.

¹⁰ This review examined both Jericho's existing zoning bylaw and the September 2008 draft of the proposed new zoning bylaw.

¹¹ In Jericho's existing bylaw, section 301.1 states that "Any use not specified as permitted or conditional anywhere in this document shall be considered prohibited" and does not list Mobile Home Park in the table in section 301.6. This should be reviewed for compliance with 24 VSA 4412 (1) (C). Proposed new section 4.5.12 will resolve this situation.

¹² In Jericho's existing bylaw, section 301.6 lists an Accessory Apartment as a permitted use in most districts. This should be reviewed for compliance with 24 VSA 4412 (1) (E) which prohibits a bylaw from excluding as a permitted use one Accessory Dwelling Unit for an owner-occupied single family dwelling. The existing definition of Accessory Apartment also requires the dwelling to maintain the appearance of a one-family dwelling. This should be reviewed for compliance with 4412 (1) (E). Section 4.2 of the draft new bylaw lists Accessory Apartment as a permitted use in most districts (this should be reviewed for consistency and compliance with new section 4.5.3 and 24 VSA 4412 (1) (E)) and new section 2 does not define Accessory Apartment.

[Table footnotes continued on next page.]

- ¹³ In Jericho's existing bylaw, section 301.5 cites the outdated requirement of former 24 VSA 4409 (d) that refers to group homes serving not more than six residents. 24 VSA 4412 (1) (G) now relates to homes serving not more than eight persons. Proposed new section 4.5.1.1 will rectify this defect.
- ¹⁴ This review examined both Richmond's existing bylaws and the December 17, 2008 drafts of the proposed amended bylaws.
- ¹⁵ The Richmond Planning Commission has submitted to the Selectboard a December 17, 2008 draft of a zoning bylaw amendment that will, if adopted, improve two provisions in the existing zoning bylaw's treatment of Accessory Dwellings: (1) Section 7.2 a) of the existing bylaw contains a condition that should be reviewed for compliance with 24 VSA 4412 (1) (E) and (2) Section 3 and the respective district regulations of the existing bylaw prohibit an Accessory Dwelling in the V/C, C, and I/C districts and authorize an Accessory Dwelling in the G district only as a conditional use.
- ¹⁶ The Richmond Planning Commission has submitted to the Selectboard a December 17, 2008 draft of a zoning bylaw amendment that will, if adopted, improve two provisions in the existing zoning bylaw's treatment of Group Homes: (1) Section 7.2's definition of Small Group Home in the existing bylaw relates to six or more residents and (2) the existing bylaw permits Group Homes as a conditional use in the AR, HDR, RC, G, V/C, and C districts and prohibits a Group Home in the I/C and MHP districts. 24 VSA 4412 (1) (G) provides that a home operating under state licensing or registration serving not more than eight persons must be considered as a permitted single-family residential use.
- ¹⁷ Section 860 authorizes accessory dwellings in any district in which a single family residence is allowed, but 24 VSA 4412 (1) (E) prohibits a bylaw from having the effect of excluding as a permitted use one accessory dwelling unit for any owner-occupied single-family dwelling.
- ¹⁸ This review examined both Shelburne's existing bylaws and the September 2008 draft of the proposed new bylaws.
- ¹⁹ Section 3.10 E. establishes that an accessory residential unit "...*may be permitted by the Development Review Board in accordance with Article 14, Site Plan Review and [additional]... criteria*" that establishes procedures and standards that should be reviewed for compliance with 24 VSA 4412 (1) (E) which states that a bylaw may not have the effect of excluding as a permitted use one accessory dwelling unit for any owner-occupied single family dwelling.
- ²⁰ The zoning bylaw does not include in the lists of permitted uses and conditional uses for any district a mobile home, mobile home park, group home, or child care home.
- ²¹ Section 1.3 stipulates that "*Any use not expressly permitted in any district is prohibited in that district.*" The zoning bylaw does not include "mobile home" in the lists of permitted uses and conditional uses for any district. The Town currently interprets their bylaw so that a mobile home is considered a dwelling. An express bylaw provision that defines a "dwelling" as explicitly including a "mobile home" would help to prevent any complaints about compliance with 24 VSA 4412 (1) (B).
- ²² The City expects to amend its bylaws in 2009. The existing subsection relating to permitted uses for each district (such as 4.002) provides that "*Uses not expressly permitted are prohibited except those uses granted conditional use approval...*" The bylaw does not authorize in the lists of permitted uses and conditional uses for every district (nor in the General Regulations of Article VIII) accessory dwelling units, group homes, or child care homes.

Table 3 illustrates that the vast majority of municipalities in Chittenden County (unlike many other regions in Vermont) have enacted zoning, subdivision, and planned unit development or planned residential development regulations. These bylaws establish in advance locally defined procedures and standards for considering proposed residential development. Most municipalities employ various regulatory measures to provide opportunities for greater housing affordability.

Table 4 shows that the review of land development regulations of the municipalities in Chittenden County did not identify any apparent violations of the federal or State Fair Housing Acts. However, the regulations of many municipalities have isolated features that possibly could be construed as barriers to affordable housing or impediments to housing choice. For example, because many municipalities in the County highly value their rural character and natural features, they often use large minimum lot sizes to limit development in large portions of their jurisdictions. These communities should be aware that large lot sizes can have the effects of increasing housing costs and limiting housing opportunities. As a consequence, each of these communities should be prepared to demonstrate that

- ◆ Large lot sizes are needed to implement important community development policies that are clearly articulated in the municipal plan and the purpose statements of the relevant zoning districts and
- ◆ The municipality is undertaking measures in other parts of the community to promote housing affordability and choice.

In addition, some municipalities should consider amending their regulations to conform to the precise requirements of recently enacted Chapter 117 amendments addressing housing opportunities (most municipalities already have done so or are in the process of doing so).

Fair Housing Checklists

The three fair housing checklists provided in this section identify measures that municipal officials can take to refine their actions and decisions in order to avoid accusations of fair housing violations and to demonstrate that the community affirmatively furthers fair housing. Undertaking actions using the guidance of these checklists will evidence the municipality's intent to conduct its affairs in ways that do not purposefully discriminate and that minimize the creation or perpetuation of unfair burdens that also are prohibited by fair housing laws.

Each checklist is for a set of activities that are likely to trigger municipal fair housing responsibilities:

- ◆ Municipal Planning,
- ◆ Municipal Land Development Regulation, and
- ◆ Municipal Property, Services, and Subsidies.

The measures presented in each checklist are organized into three categories (where relevant):

- ◆ Assessing Needs & Impediments – Investigating, evaluating, and documenting the breadth and depth of fair housing needs and the likely areas of concern for a particular community;
- ◆ Removing Barriers – Actions to rectify identified impediments; and
- ◆ Supporting Fair Housing Opportunities – Actions and incentives that promote expansion of housing opportunities.

Each measure identifies

- ◆ Reasons why municipal officials should undertake the measure,
- ◆ General guidance on how the municipality can most easily perform the measure, and
- ◆ Sources of assistance in performing the measure (see the Resources appendix, pages 21-22).

Municipal Planning Fair Housing Checklist

Assessing Needs & Impediments¹³

- Document the presence of people in the community and region who may experience discrimination that is prohibited by fair housing laws.** The starting point for assessing housing needs and for exposing fair housing impediments is to include information on the composition of the resident population of the community and of Chittenden County. However, the presence of one group does not preclude vigilance in combating discrimination against ALL groups.

The Resources appendix provides online sources of demographic information (see page 22). Although data likely will not be available for every group, attempt to include information on the categories that are the bases of unlawful discrimination in the federal and State fair housing acts:

- Race/Color
- Religion
- Marital Status
- Age
- Sexual Orientation
- National Origin
- Gender
- Familial Status/Size
- Disability
- Public Assistance
- Also attempt to estimate the number of people who require accessibility modifications in housing units or special housing units, regardless of the factors creating this need.
- Because so many people in Chittenden County live in one community and work in another, the County's housing market is regional in character. Consequently, it is important to compare the community's demographic characteristics with those of the County to identify the full potential demand for housing in the community.
- Use data on past conditions to illustrate trends over time.
- Use projections or forecasts of the expected future numbers of people in these categories to assess their future housing needs.

- Include income data for people in the community and region.** Housing affordability has a substantial impact on housing opportunities. A household that is unable to afford portions of the housing in a community already has its housing choices constrained. By further limiting choice, housing discrimination may make it impossible for such households to live in the community.

Cross-tabulate income data (see page 22 for data sources) with the categories of people who may experience discrimination prohibited by fair housing laws (see above). If comprehensive income data is unavailable, attempt to identify the numbers of households earning less than 80 percent of median household income, because this category is the focus of State affordable housing policies. Consider using historic data to document recent and long-term trends (Are incomes or wages growing or declining and at what rate?). Consider using projections or forecasts of incomes or wages to assess whether past trends are likely to continue.

- Analyze the supply of housing units.** Inventory the number of different types of housing (such as single family housing, multifamily dwellings, mobile homes, special needs / accessible housing, and units with large numbers of bedrooms) in the community and region. Consider whether there are gaps in the supply of housing compared with the need for housing by the types of households in the community and region. Consider using historic data to document recent and long-term trends (Are conditions improving or declining and at what rate?).
- Analyze data on the monthly costs of owning and renting housing.**
 - Gather data on a household's monthly costs to own housing in the community and region (if possible, for the different types of housing in the community and region, such as single family housing, multifamily dwellings, and mobile homes).
 - Gather data on a household's monthly costs to rent housing in the community and region (if possible, for units with different numbers of bedrooms). If possible, identify these costs for accessible / special needs housing units.
 - Compare these costs with the incomes of households in the community and region (see above). Rental housing costs or homeownership costs that exceed 30 percent of a household's income indicates a housing affordability problem. Compare trends in the growth of incomes with trends in the growth of rental housing costs and homeownership costs to identify whether the current situation has been improving or worsening.
- Research housing discrimination in the municipality and region.** Contact federal, State, and regional agencies (see Resources) for data on the number of recent housing discrimination complaints and changes over time. Complaints reflect only reported housing discrimination, but these data indicate fair housing problems.
- Research areas of spatial concentration of households protected by fair housing laws.** Such areas may be evidence of intentional discrimination or unintentional (but unlawful) disparate impact of past official decisions. Future decisions affecting such areas also should be especially sensitive to the municipality's fair housing responsibilities.

¹³ CCRPC can assist in designing approaches for gathering primary data and researching secondary data.

Removing Barriers to Fair Housing

- Identify potential impediments and barriers caused by current bylaws.** Because land-use bylaws are required to be compatible with the municipal plan, the plan is a good place to document any need to revise bylaws to remove any impediments to fair housing and barriers to affordable housing¹⁴ that are revealed by the assessment steps above. Although the plan does not actually remove any impediments or barriers, the plan is where the removal process can and should start.
- Review plan language and remove any statements that conflict with fair housing.** Because land-use bylaws are required to be compatible with the municipal plan, any language in a municipal plan that is contradictory to the precepts of fair housing provide a false justification for bylaw provisions that give rise to accusations of fair housing violations. Examples of such language include both policies that would tend to support provisions that additionally violate 24 VSA 4412 (especially this section's first subsection) or they could be more subtle, such as policies that could be construed as resisting non-mainstream households.

Supporting Fair Housing Opportunities

- Establish a policy in support of fair housing.** The plan should include a policy statement that supports equal housing opportunity as a fundamental principal guiding its land-use policies, for example, "All residents, regardless of race, sex, sexual orientation, age, income, marital or familial status, religious creed, color, national origin or handicap of a person, may enjoy fair, equal and affordable access to housing opportunities."
- Establish policies that support addressing specific local housing needs.** The plan should include a policy statement that supports addressing each type of housing need defined by the community
- Call for land-use bylaws to promote fair housing and affordable housing opportunities.** Include language in the plan to institute periodic review of land-use bylaws, to consider all future proposed bylaw revisions for their impacts on housing opportunities, and to encourage that all future revisions with housing impacts should promote opportunities for more affordable housing and housing that meets the needs of diverse households.
- Consider the need to implement specific types of incentives for fair housing and affordable housing opportunities targeted to your community's situation.** The plan could identify the specific types of incentives that would be especially likely to promote the development of affordable housing units¹⁵ or *visitabile*¹⁶ units, based on the community's own analysis of barriers (for examples, see the checklist for municipal regulations).
- Consider other municipal initiatives that will further fair housing and affordable housing opportunities.** The plan can support other community initiatives, such the creation of a local housing commission, local fair housing enforcement standards, and/or the use of municipal funds and grant funds to subsidize the development of housing targeted to local needs (perhaps in partnership with public, private and nonprofit entities).

¹⁴ 24 VSA 4382 (a) (10) requires all municipal plans to include "A *housing element that shall include a recommended program for addressing low and moderate income persons' housing needs as identified by the regional planning commission...*" CCRPC has developed a set of housing targets for each municipality that serve as a starting point for each community to identify the measures that the municipality believes would address locally defined barriers to housing (see <http://www.ccrpcvt.org/vertical/Sites/%7BB8DFDB70-7812-4FAE-9861-8A26C79323B6%7D/uploads/%7BFDD3161E-2831-402E-8EAD-352586D77937%7D.PDF>).

¹⁵ Ibid.

¹⁶ Unit accessibility modifications are usually the responsibility of the unit resident, at their expense, with reasonable facilitation provided by the landlord or seller, and multi-family structures of four or more units are subject to accessibility requirements under the U.S. Fair Housing Act (42 USC §3601 et seq.). The existing Vermont accessibility requirements for residential construction (20 VSA §2907) are that at least one exterior door be at least 36 inches wide and that all first floor interior doors between rooms are at least 34 inches wide with at least 32 inches of clear passage. In addition, unit *visitability* can be encouraged for all other housing, by adding that at least one exterior entrance be at grade (no steps), approached by an accessible route. For more on *visitability*, see page 4-12 of the *Fair Housing Planning Guide, Vol. 1* listed in the Resources appendix.

Municipal Regulations Fair Housing Checklist

Removing Barriers to Fair Housing

- Review requirements affecting housing density.** In zoning bylaws (and perhaps in subdivision bylaws), consider whether minimum lot sizes and setback distances required for different types of housing in each district can be revised to permit increased density without significantly compromising other community development policies. Land costs typically are a major determinant of housing costs, so that allowing for increased numbers of housing units on the same area of land can mean significant cost savings. Many community development policies can be effectively addressed by means that are less expensive than requiring larger lot sizes.
- Eliminate language that may unlawfully discriminate against affordable housing (including mobile homes, mobile home parks, and multi-family units) and special needs housing.** 24 VSA §4412 (1) requires that no municipal bylaw may have the effect of excluding
 - Housing that meets the needs of the population as determined by the program of local actions in the municipal plan's housing element that is required to address the housing needs of low and moderate income persons;
 - Mobile homes, modular housing, and prefabricated housing except under the same terms and conditions as conventional housing (except for provisions of design review districts 24 VSA 4414 (1) (E) and local historic districts 24 VSA 4414 (1) (F));
 - Mobile home parks;
 - Multiunit or multifamily dwellings; or
 - One accessory dwelling unit within or appurtenant to an owner-occupied single family dwelling unit as a permitted use.¹⁷In addition, bylaws must
 - Designate appropriate districts and reasonable regulations for multiunit or multifamily dwellings and
 - Regulate a state-licensed residential care home or group home that serves not more than eight persons who have a handicap or disability as a permitted single-family residential use, except if it is within 1,000 feet of another such home.¹⁸
- Eliminate maximum bedroom requirements.** Regulatory limits on the number of bedrooms per housing unit are not often used in Vermont because it is highly likely that such requirements will violate Vermont's *Fair Housing Law*.

Supporting Fair Housing Opportunities

- Encourage accessory dwelling units.** State law¹⁹ defines an accessory dwelling unit as "...an efficiency or one-bedroom apartment that is clearly subordinate to a single family dwelling, and has facilities and provisions for independent living, including sleeping food preparation, and sanitation,..." The State prohibits municipal bylaws from excluding as a permitted use one accessory dwelling unit located within or appurtenant to an owner-occupied single family dwelling provided the following conditions are met:
 - 1) The property has sufficient wastewater capacity,
 - 2) The unit does not exceed 30 percent of the habitable floor area of a single family dwelling, and
 - 3) Applicable setback, coverage, and parking requirements specified in the bylaws are met.Accessory dwelling units expand opportunities for affordable housing and particularly housing opportunities for people with special needs. The State also authorizes a municipality to enact bylaw provisions that are less restrictive of accessory dwelling units than the conditions listed above. Examples of less restrictive standards would be to increase the floor area limit to 50 percent or to increase the allowable lot coverage, specifically under the condition that an accessory dwelling unit is provided.

¹⁷ See 24 VSA 4412 (1) (E) & (F) for detailed limitations and exceptions to this prohibition.

¹⁸ See 24 VSA 4412 (1) (G) for details on the specific limitations of this prohibition.

¹⁹ See 24 VSA 4412 (1) (E) & (F) for the detailed standards and conditions relating to accessory dwelling units.

- Explicitly provide for the municipality to make “reasonable accommodations” in the enforcement of bylaw standards and conditions.** Because regulations may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. Consequently, the U.S. Fair Housing Act prohibits the “...*refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling...*”²⁰ Explicitly stating in land development bylaws that the community recognizes its obligation to make reasonable accommodations when enforcing the bylaw (1) informs people of their opportunity to request the municipality to make a reasonable accommodation and (2) alerts officials and the public of the municipality’s obligation to make a reasonable accommodation in advance of the time when a request is made.
- Provide regulatory incentives for developments providing targeted housing.**²¹ Regulatory incentives provide entire or partial relief from conforming to the strictest degree of a bylaw standard or condition if the development includes a feature the community seeks to encourage. Municipalities use regulatory incentives to encourage developers to refine their proposed developments to achieve a wide range of community development objectives. A community should provide the number, types, and degrees of incentives that will cause developers to include the targeted housing features. Examples of specific types of regulatory incentives include residential density bonuses, reduced off-street parking requirements, and impact fees reductions or waivers.²² The municipality makes these incentives available for the types of housing that the municipality targets in its plan as being in need, such as affordable housing and/or visitable units.
- Provide incentives in permit review processes for developments providing targeted housing.**²³ Process incentives reduce a developer’s costs for the community’s review of a permit application for a development that includes housing features the community encourages. A community should provide the number, types, and degrees of incentives that will cause developers to include the targeted features. Examples of process incentives include waiving or reducing permit application fees and expediting the permitting process. The municipality makes these incentives available for the types of housing that the municipality targets in its plan as being in need, such as affordable housing and/or visitable units.
- Establish inclusionary zoning for targeted housing.**²⁴ Inclusionary zoning requires a proposed development to include a certain percentage of housing units that have housing features the community encourages. This requirement usually applies only to a development proposing to build a minimum number of total units in one or more phases (such as 20 units). The municipality establishes inclusionary zoning for the types of housing that the municipality targets in its plan as being in need, such as affordable housing and/or visitable units.
- Establish permit set asides for targeted housing.**²⁵ Municipalities that establish a program of issuing a maximum number of residential development permits per year can set aside a certain portion of these for housing that has features that the municipality targets in its plan as being in need, such as affordable housing and/or visitable units.
- Establish planned unit development (PUDs) regulations.**²⁶ Whether in a zoning bylaw or a freestanding bylaw, establishing the process to approve PUDs allows a community to substitute good site design principles for uniform design standards (such as minimum lot sizes) in the review of a proposed development so that it fulfills community development policies.

²⁰ 42 USC 3604 (f) (3) (B). Municipalities must consider a request for reasonable accommodations according to its unique circumstances. Not surprisingly, the obligation to provide reasonable accommodations is a much-litigated issue that merits careful consideration by municipal officials. For additional details on this issue, see Office of Fair Housing & Equal Opportunity / U.S. Dept. of Housing & Urban Development, “Reasonable Accommodations Under the Fair Housing Act,” (2004) posted at http://www.usdoj.gov/crt/housing/jointstatement_ra.php.

²¹ 24 VSA §4414 (8) specifically authorizes municipalities to grant waivers to reduce bylaw dimensional requirements in accordance with specific standards that conform with the municipal plan and goals of Chapter 117. 24 VSA §4418 (2)(A) specifically authorizes municipalities to waive or modify the requirements of subdivision regulations, subject to appropriate conditions.

²² 24 VSA §5205 specifically authorizes municipalities to exempt certain types of development from any part or all of the impact fee assessed, provided the exemption achieves other policies or objectives clearly stated in the municipal plan (§5205 also specifically lists the provision of affordable housing as an example).

²³ 24 VSA §4411(b), §4418, and §4463 grant municipalities broad authority to establish the procedures for the review of proposed developments.

²⁴ 24 VSA §4414 (7) specifically authorizes municipalities to enact inclusionary zoning.

²⁵ 24 VSA §4411(a)(4) and §4422 specifically authorize municipalities to establish maximum annual limits on the issuance of development permits in their land-use bylaws.

²⁶ 24 VSA §4417 specifically authorizes municipalities to adopt PUD regulations.

Municipal Property, Services, and Subsidies Fair Housing Checklist

Assessing Needs & Impediments

- Partner with fair housing organizations, State agencies, and CCRPC to assess local and regional housing needs and issues.** Participating in joint efforts to gather information about local housing needs and issues provides the basis for determining the regional scope of those needs and issues. An example of such a joint effort is CVOEO's Fair Housing Progress Report (completed by 10 Chittenden municipalities in 2008).
- Establish a housing committee or affordable housing committee to assess the community's housing needs.** The municipality can establish an ad hoc committee with the mission of examining a specific subject (such as the need for affordable housing or special needs housing) in advance of the required update of the municipality's plan at least every five years. Alternatively, the municipality can establish a standing committee with the ongoing mission of reporting annually to the Planning Commission on the community's housing needs.
- Seek and support grant funding to identify housing needs and impediments.** Research opportunities for public and private grants to fund efforts to plan for housing needs and to implement strategies for addressing impediments. Consider writing official letters of support for public and private grants on behalf of non-profit organizations and public agencies to undertake such efforts in local and regional projects and programs.

Removing Barriers to Fair Housing

- Educate municipal officials about the community's housing needs and fair housing responsibilities.** The efforts to affirmatively further fair housing and to eliminate impediments to housing opportunities starts with building the awareness and commitment of elected and appointed municipal officials. In addition to providing basic information to all new officials, experienced officials need to keep up-to-date on the latest issues and solutions.²⁷
- Educate residents about the community's housing needs and fair housing responsibilities.** Encourage skeptics and critics to take part in the community's consideration of plan or bylaw amendments that remove barriers to affordable housing or impediments to housing choice to build general community support for such initiatives, rather than waiting for opponents to scuttle individual projects.²⁸
- Consider the fair housing implications of decisions concerning the acquisition, use, and disposition of municipal real property.** When the municipality buys, sells, or uses real property, particularly if the property was, will be, or could be residential, consider, "*What are the fair housing implications of undertaking this action and of undertaking no action?*"
- Consider the fair housing implications of decisions concerning municipal services or subsidies.** When the municipality provides services in residential areas or to residents (such as infrastructure improvements) or offers financial incentives (such as, grants, loans, or loan guaranties) or special services (such as housing rehabilitation services) to certain residential property owners or to certain residents consider, "*What are the fair housing implications of undertaking this action and of undertaking no action?*"

Supporting Fair Housing Opportunities

- Establish a community housing fund.** 24 VSA 2804 authorizes a municipality to establish a Reserve Fund to accumulate revenues over more than one fiscal year and to dedicate those funds periodically to one or more defined purposes. Housing to address particular needs often requires funding support from multiple public and private sources. A community housing fund may provide a critical piece of support that leverages other funds. Some public and private grants also require or give preference to funding requests where local commitment to the proposed project is demonstrated by the use of local funds.

²⁷ Training materials and programs are provided by the Champlain Valley Office of Economic Opportunity (http://www.cvoeo.org/htm/Housing/fair_housing/fair_housing.html) and the Vermont Department of Housing and Community Affairs (<http://www.dhca.state.vt.us/Housing/index.htm>).

²⁸ National organizations provide extensive materials on campaigns to combat NIMBYism of affordable housing and special needs housing (for example, see materials posted at <http://www.nmhc.org/Content/BrowseContent.cfm?IssueID=566&siteArea=Topics> and <http://www.stopstigma.samhsa.gov/publications/combatingNIMBY.aspx>).

- Seek and support grant funding to subsidize targeted housing.** Research opportunities for public and private grants to support developing housing that the community targets in its plan as being in need. Consider writing official letters of support for public and private grants on behalf of developers of housing that will address needs targeted in the plan.
- Reduce or waive fees for targeted housing.** Establish and implement standing policies for reducing or waiving impact fees,²⁹ water / sewer connection fees, and other municipal fees (when such reductions or waivers are authorized) for a development that includes features the community targets in its plan as being in need, such as affordable housing and/or visitable units.
- Establish sewer or water connection set asides for targeted housing.** Municipalities that establish a program of issuing a maximum number of public sanitary sewer connections or public water supply connections per year can set aside a certain portion of these for housing that has features that the municipality targets in its plan as being in need, such as affordable housing and/or visitable units.

²⁹ 24 VSA §5205 specifically authorizes municipalities to exempt certain types of development from any part or all of the impact fee assessed, provided the exemption achieves other policies or objectives clearly stated in the municipal plan (§5205 also specifically lists the provision of affordable housing as an example).

Resources for Further Information

The following organizations, publications, statutes, and data sources provide information that municipalities may find helpful as they use the fair housing checklists.

Organizations

National

Office of Fair Housing & Equal Opportunity / U.S. Dept. of Housing & Urban Development
<http://www.hud.gov/offices/fheo>
(800) 669-9777 or hearing impaired: TTY (800) 927-9275

Regulatory Barriers Clearinghouse / U.S. Dept. of Housing & Urban Development
<http://www.huduser.org/rbc/>
(800) 245-2691

State of Vermont

Vermont Human Rights Commission
<http://www.hrc.state.vt.us>
(800) 416-2010

Dept. of Housing & Community Affairs / VT Agency of Commerce & Community Development
<http://www.dhca.state.vt.us/Housing/fairhousing.htm>
(800) 828-3211

Dept. of Disabilities, Aging & Independent Living / VT Agency of Human Services
<http://dail.vermont.gov/>
(802) 241-2648 or hearing impaired: TTY (802) 241-3557

Vermont Fair Housing Council / Vermont Legal Aid
http://www.vtlawhelp.org/Home/PublicWeb/Library/Index/1690000/1690100/index_html#1690100
(800) 889-2047

Regional

Fair Housing Project / Champlain Valley Office of Economic Opportunity
http://www.cvceo.org/htm/Housing/fair_housing/fair_housing.html
802-864-3334 Ext. 102

Publications

Fair Housing Planning Guide, Vol. 1; Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development; 1996.
<http://www.hud.gov/offices/fheo/images/fhpg.pdf>

Fair Housing Act Design Manual, revised; Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development; 1998.
<http://www.huduser.org/publications/destech/fairhousing.html>

The Basics of Fair Housing; VT Association of Planning and Development Agencies; 2002.
<http://www.ccrpcvt.org/vertical/Sites/%7BB8DFDB70-7812-4FAE-9861-8A26C79323B6%7D/uploads/%7B32211794-0EAD-46E1-A97A-BA7E7746C542%7D.PDF>

Examples of Activities to ‘...affirmatively further fair housing;’ VT Association of Planning and Development Agencies; 2002.
<http://ccrpcvt.org/vertical/Sites/%7BB8DFDB70-7812-4FAE-9861-8A26C79323B6%7D/uploads/%7B96AB170B-8E5E-443E-8D8D-E76E2B48E655%7D.PDF>

Shaping the Future of Long Term Care and Independent Living (2005-2015); Department of Disabilities, Aging & Independent Living, Vermont Agency of Human Services; 2006.
<http://www.dad.state.vt.us/WhatsNew/ShapingTheFuture20052015May2006.pdf>

Statutes

National

U.S. Fair Housing Act
42 U.S.C. 3601 et seq.
<http://www.hud.gov/offices/fheo/FHLaws>

State of Vermont

Discrimination; Public Accommodations; Rental and Sale of Real Estate
9 VSA Chapter 139
<http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=09&Chapter=139>

Accessibility Standards; Residential Construction
20 VSA §2907 (Chapter 174)
<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=20&Chapter=174&Section=02907>

Municipal and Regional Planning and Development
24 VSA Chapter 117
<http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=24&Chapter=117>

Data Sources

Chittenden County Regional Planning Commission
<http://www.ccrpcvt.org> (802) 846-4490
Can assist in gathering, analyzing, and presenting housing data.

Demographic Data

Vermont Indicators Online
<http://maps.vcgi.org/indicators/>
Profiles for municipalities and counties that include data (some historical) from federal and state agencies.

Vermont Dept. of Disabilities, Aging & Independent Living
<http://dail.vermont.gov/dail-publications>
Information on special needs population data and population projections.

Vermont State Data Center
<http://crs.uvm.edu/census/data.cfm>
Gateway to U.S. Census Bureau data (including demographic, economic, and housing data).

Economic, Income, & Housing Cost Data

Vermont Housing Data
<http://www.housingdata.org/profile>
Produces housing data profiles for towns and counties that include data from various federal and state agencies. Includes analysis of housing sales prices.

Vermont Dept. of Labor – Employment and Wage Data
<http://www.vtlmi.info/indnaics.htm>
Includes data on employment and wages by industry sector.

Housing Supply Data

Vermont Housing Data
<http://www.housingdata.org/profile>
Produces housing data profiles for towns and counties that include data from various federal and state agencies.