

THE FAIR HOUSING ACT

**Application to Local Land Use Laws and
Practices**

FEDERAL FAIR HOUSING ACT (AMENDED)

- Title VIII of the Civil Rights Act of 1968
- Amended in 1988 to extend protections to individuals with disabilities.



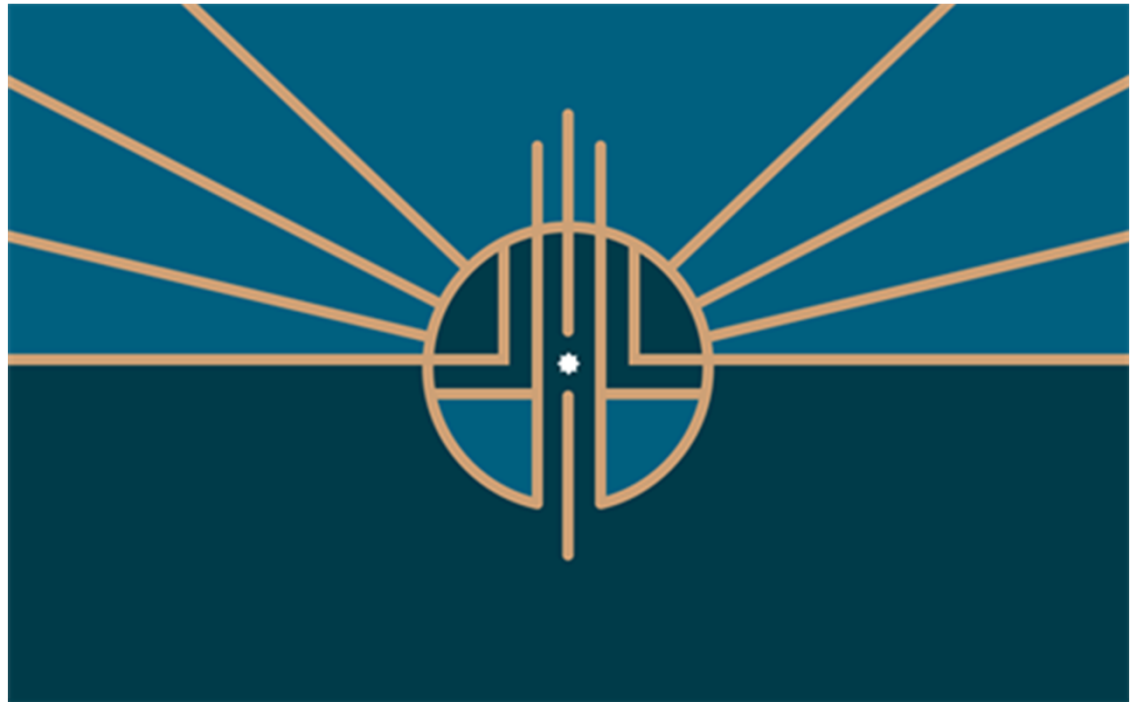
NEBRASKA FAIR HOUSING ACT

- State version of FHA
- Complaints investigated by NEOC



LOCAL LAND USE LAWS

The FHA prohibits municipalities and other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against individuals protected by fair housing law, whether intentionally or by discriminatory effect.



INTENT & MOTIVATION

[T]he City's motives for not granting a reasonable accommodation are immaterial—all that matters is whether [applicant] was entitled to a reasonable accommodation under the law.”

Developmental Servs. of NE v. City of Lincoln, 504 F. Supp. 2d 714, 723 (D. Neb. 2007)

REASONABLE ACCOMMODATION

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

Think of the blind woman who obtains an exemption from a “no pets” policy for her seeing eye dog, or the paraplegic granted special permission to live on a first floor apartment because he cannot climb the stairs. But without an accommodation, those individuals cannot take advantage of the opportunity (available to those without disabilities) to live in those housing facilities. And they cannot because of conditions created by their disabilities. These examples show that under the FHA it is sometimes necessary to dispense with formal equality of treatment in order to advance a more substantial equality of opportunity. And that is precisely the point of the reasonable accommodation mandate: to require changes in otherwise neutral policies that preclude the disabled from obtaining “the same opportunities that those without disabilities automatically enjoy.”

Cinnamon Hills, 685 F.3d at 923 (cleaned up) (quoting *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 397, 122 S.Ct. 1516, 152 L.Ed.2d 589 (2002)).

DISABILITY

A physical or mental impairment which substantially limits one or more of such person's major life activities,

A record of having such impairment, or

Being regarded as having such an impairment.

LINCOLN MUNICIPAL CODE 1.28

Applications for reasonable accommodation to City law, rule, policy, or regulation are submitted to City Clerk.

Clerk refers to City Council, who refers to Reviewing Authority, where appropriate.

Reviewing Authority makes recommendation to City Council.

City Council makes ultimate determination.

LMC 1.28.050 - FACTORS

Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled or handicapped under the Acts.

Whether the accommodation requested is financially, therapeutically, or otherwise necessary to make specific housing available to the individual or group of individuals with a disability or handicap under the Acts.

Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit.

Whether alternative accommodations would be suitable based on the circumstances of this particular case.

If applicable, whether the requested reasonable accommodation would be consistent with the Comprehensive Plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent of the zoning district in which the use is located.

Whether the requested reasonable accommodation substantially affects the physical attributes of the property.

Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

Whether the requested reasonable accommodation would require a fundamental alteration to the zoning, building, fire, or safety codes of the City.

**ELEMENTS TO
REASONABLE
ACCOMMODATION
CLAIM**

Reasonable

Necessary – Therapeutic
or Financial

Equal Opportunity

GROUNDS FOR DENIAL



Undue financial or
administrative burden



Fundamental alteration in
the nature of the zoning
program

UNDUE FINANCIAL OR ADMINISTRATIVE HARDSHIP

Developer proposed a 95 bed skilled nursing facility and requested various accommodations to City code. City presented evidence of serious traffic safety issues, including traffic movement within the parking lot, increased traffic on the avenue, and safety of ingress and egress from the parking lot, and inadequate access for emergency vehicles. The board raised serious and legitimate concerns about these issues and that the developer failed to rebut these concerns or to account for them by altering its proposed plan

[Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Tp. of Scotch Plains, 284 F.3d 442 \(3d Cir. 2002\)](#)

FUNDAMENTAL ALTERATION OF ZONING SCHEME

[Yates Real Estate, Inc. v. Plainfield Zoning Board of Adjustment, 404 F. Supp. 3d 889 \(D.N.J. 2019\).](#)

Real estate developer's proposed accommodation, of 38 variances and 33 waivers, to permit development of apartment building to house veterans, some of whom had post-traumatic stress disorder (PTSD), would have fundamentally altered city's zoning scheme and was not reasonable. Developer proposed significant addition to existing building but failed to meet minimum unit size for studio apartments, property would have had one-quarter of required parking spaces, exacerbating on-street parking issues, and proposal was inimical to historic preservation element of city's master plan.

EXAMPLES

**DEVELOPMENTAL SERVICES OF NEBRASKA, PLAINTIFF,
V.
CITY OF LINCOLN, DEFENDANT.**

UNITED STATES DISTRICT COURT, D. NEBRASKA. (2007)

- **DSN requested a reasonable accommodation for the separation distances for group homes and/or the definition of “family” to allow group home with 4 residents in residential neighborhood.**
- **Planning Commission recommended denial.**
- **City Council denied the request.**

**DEVELOPMENTAL
SERVICES OF
NEBRASKA,
PLAINTIFF,
V.
CITY OF LINCOLN,
DEFENDANT.**

**UNITED STATES
DISTRICT COURT,
D. NEBRASKA.
(2007)**

“Evidence showing heaps of red tape, garnished with bureaucratic indifference and inconsistent and irrelevant posturing by city officials, elected and otherwise, does not make the City of Lincoln guilty of consciously intending to discriminate against people with developmental disabilities. But that evidence, and more, does prove that Lincoln denied a group home provider and its developmentally disabled clients reasonable accommodations to land-use requirements. As a result, taxpayers will have to pay the provider a lot of money for the City's violation of federal law. Sadly, by merely acting reasonably, Lincoln could have easily avoided that expensive outcome.”

JUDGEMENT



**\$331,928.00 –
DAMAGES**



**\$253,407.00 –
ATTORNEY FEES**



**NEW HOPE FELLOWSHIP,
INC. V. CITY OF OMAHA,
NEB., 2005 WL 3508407 (D.
NEB. 2005)**

NEW HOPE FELLOWSHIP, INC. V. CITY OF OMAHA, NEB., 2005 WL 3508407 (D. NEB. 2005)

- City of Omaha unlawfully failed to make a reasonable accommodation granting a special use permit for residential treatment center serving 16-20 women in recovery.
- Group home failed to meet 1/2 mile spacing requirement because another group home was directly across the street. Applicant requested reasonable accommodation to the spacing requirement.
- City argued this was a fundamental alteration of the zoning regulation because it was a 94% reduction in the spacing requirement.
- Court rejected City's argument finding no fundamental alteration.

JUDGEMENT



**\$2,263.50 –
DAMAGES**



**\$147,947.00 –
ATTORNEY FEES**

CINNAMON HILLS YOUTH CRISIS CENTER, INC. V. SAINT GEORGE CITY (10TH CIR., 2012)

- **Treatment facility sought to expand operations to allow participants to live in a facility on the top floor of a local motel.**
- **Remaining floors would continue to operate as motel open to the public.**
- **Sought accommodation to zoning ordinances that forbid more than 29-day stay in commercial zone.**

**CINNAMON HILLS
YOUTH CRISIS
CENTER, INC. V.
SAINT GEORGE
CITY (10TH CIR.,
2012)**

- The court found in the City's favor, holding that disabled residents of the facility were not seeking an accommodation to achieve *equal opportunity* to live in the commercial zone because *no one, able bodied or not*, was allowed to reside in the Commercial zones.

ENFORCEMENT



Complaint/investigation/administrative action by US Department of Housing and Urban Development or Nebraska Equal Opportunity Commission.

Litigation in State or Federal Court

RESOURCES

- **JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUSING ACT**
- *Swanston v. City of Plano, Texas*, 557 F. Supp. 3d 781 (E.D. Tex. 2021)