

# Fair Housing and Zoning as Anti-Gentrification: The Case of Boston, Massachusetts

*James Jennings\**

## Introduction

The Fair Housing law protects individuals and groups based on race, color, religion, sex, familial status, national origin, or having a disability. In addition to the federal protected classes, Massachusetts Anti-Discrimination Law, Massachusetts General Laws, ch.151B, prohibits discrimination against the following protected classes: sexual orientation, marital status, ancestry, age, presence of children, veteran status or membership in the armed forces, receipt of Section 8 or other public assistance, source of income, or genetic information.<sup>1</sup>

Under the Obama administration, the final rule relating to housing, promulgated by the U.S. Department of Housing and Urban Development (HUD Rule 2015), requires local and state governments to assess affirmatively furthering fair housing in meaningful and expansive ways based on the Fair Housing Act of 1968. As reiterated in HUD Rule 2015:

Affirmatively furthering fair housing means taking proactive steps beyond simply combating discrimination to foster more inclusive communities and access to community assets for all persons protected by the Fair Housing Act. More specifically, it means taking steps proactively to address significant disparities in access to community assets, to overcome segregated living patterns and support and promote integrated communities, to end

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\*James Jennings, PhD, is Professor Emeritus, Urban and Environmental Policy & Planning at Tufts University, <https://sites.tufts.edu/jamesjennings>. Between 2017 and 2021, he worked with the AFFH Community Advisory Committee (CAC) composed of longtime housing and civil rights activists, to complete Boston's Assessment of Fair Housing. The author expresses appreciation to Ashley E. Harding, Dr. Lisette DeSouza, and Dr. Jen Douglas for research assistance and to members of CAC who worked in completing the Assessment of Fair Housing: Kathy Brown, Kadineyse Ramirez Peña, and Lincoln Larmond (Boston Tenant Coalition); Robert Terrell (Boston Housing Authority); Zakiya Alake (Roxbury Neighborhood Council); Barbara Chandler (Metro Housing Boston); Nadine Cohen and Margaret Turner (Greater Boston Legal Services); David Harris (Charles Hamilton Houston Institute for Race & Justice, Harvard University); Dwaigh Tyndal, Hajar Logan, and Sophia E. Owen (Alternatives for Community and Environment).

1. See MASS. GEN. LAWS ch. 151B, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151B>.

racially and ethnically concentrated areas of poverty, and to foster and maintain compliance with civil rights and fair housing laws.<sup>2</sup>

This approach requires “meaningful” actions that would not only respond to rectifying intentional or unintentional housing discrimination but also address inequalities in the areas of segregation, poverty, transportation, public health, education, or obstacles to the application of fair housing for protected classes. It also called for strong community participation in the assessment and analysis of impediments to fair housing as well as policy and program responses.<sup>3</sup>

Under the Trump administration, this approach was abolished with its own “2020 Rule.”<sup>4</sup> But it was the HUD 2015 Rule that molded the framework and work of the Assessment of Furthering Fair Housing Community Advisory Committee (CAC), formed in 2017, to assist Boston with its Assessment of Fair Housing (AFH). Members included housing, civil rights, and community activists. This coalition insisted that the city of Boston continue with the more expansive approach to fair housing and reflective of the 2015 Rule; Boston’s leadership agreed with this stance. Within the framework of the HUD 2015 Rule, the key questions in the assessment of fair housing related to (1) the impediments to affirmatively furthering fair housing in Boston, and (2) the kinds of goals that should be adopted in response to the identified impediments and barriers.

Boston’s AFH was completed in 2020. It was based on HUD guidelines for affirmatively furthering fair housing, including documenting and analyzing history of segregation in Boston and the Boston metropolitan region; reviewing historical and continuing patterns of intentional and unintentional discrimination; collecting and analyzing census and administrative data about social, economic, housing, health, transportation, education, and public safety inequalities that would inhibit the guarantee of fair housing. It also involved collecting and analyzing public testimony and written testimony about obstacles to fair housing.

In 2017 the CAC helped to organize fourteen public meetings and conducted extensive outreach to more than sixty community organizations

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2. See *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42271 (July 16, 2015), <https://www.federalregister.gov/documents/2015/07/16/2015-17032/affirmatively-furthering-fair-housing>.

3. See *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42272 (July 16, 2015) (final rule), <https://www.govinfo.gov/content/pkg/FR-2015-07-16/pdf/2015-17032.pdf>.

4. See Hailey Fuchs, *Trump Moves to Roll Back Obama Program Addressing Housing Discrimination*, N.Y. TIMES (July 23, 2020), <https://www.nytimes.com/2020/07/23/us/politics/trump-housing-discrimination-suburbs.html>, (noting rationales for abolishing HUD Rule 2015 requirements); see also Part 905—The Public Housing Capital Fund Program 85 Fed. Reg. 2041 (Jan. 6, 2020) (proposed rule), [https://www.federalregister.gov/documents/2020/01/14/2020-00234/affirmatively-furthering-fair-housing?mc\\_cid=3158bcfd52&mc\\_eid=9ba9efd2d1#footnote-24-p2045](https://www.federalregister.gov/documents/2020/01/14/2020-00234/affirmatively-furthering-fair-housing?mc_cid=3158bcfd52&mc_eid=9ba9efd2d1#footnote-24-p2045); HUD, *Affirmatively Furthering Fair Housing*, 78 Fed. Reg. 43710 (July 19, 2013), <https://www.govinfo.gov/content/pkg/FR-2013-07-19/pdf/2013-16751.pdf> (proposed rule).

alerting them about the importance of a comprehensive assessment of furthering fair housing, reaching more than 500 residents. This outreach was planned and carried out in partnership with the city.<sup>5</sup> The Boston Housing Authority (BHA) and the Boston Tenant Coalition (BTC) also designed two city-wide surveys to solicit input from residents related to their fair housing experiences. Gentrification and the fear of displacement loomed as the most salient concern throughout this process. The BTC provided logistical support and resources for food and childcare at all the public meetings facilitated by CAC and the City.

The CAC collaborated with many organizations that do significant work in mobilizing communities around issues directly and indirectly related to fair housing. These organizations included the Chinese Progressive Association, the Urban League of Eastern Massachusetts, Roxbury Neighborhood Council, Right to the City Coalition, Coalition for Occupied Homes in Foreclosure (COHIF), Reclaiming Roxbury, Action 4 Equity, City Life/Vida Urbana, Dudley Square Neighborhood Initiative, NAACP Boston Branch, and other organizations. Working with city representatives, CAC completed the first full draft of the assessment of furthering fair housing and shared a draft at a Town Hall meeting attended by approximately 100 community representatives, elected and city officials on June 6, 2020. This draft, *Assessment of Fair Housing Affirmatively Furthering Fair Housing in Boston, Massachusetts: Process, Findings and Goals*, was known as the *June 2019 Plan* and was dubbed by some as the *Juneteenth Plan*.<sup>6</sup> It is this draft that was used to complete Boston's final assessment of fair housing, which included updated census data and expansion of some of the goals.

Overwhelming public testimony presented in the affirmatively fair housing sessions focused on gentrification and dislocation. Residents explained throughout the public meetings that unless gentrification is mitigated and the dangers of displacement eliminated, racial and neighborhood inequalities would only continue to grow and impact negatively the

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5. City representatives represented the Department of Neighborhood Development (DND), Boston Housing Authority (BHA), Boston Fair Housing Commission (BFHC), Boston Public Health Commission (BPHC), and Boston Planning and Development Agency (BPDA).

6. The June 2019 Plan and information about the Town Hall meeting can be accessed online. Charles Hamilton Houston Institute, *Affirmatively Furthering Fair Housing in Boston, Massachusetts: Process, Findings and Goals June 2019*, <http://charleshamiltonhouston.org/wp-content/uploads/2020/05/June-2019-Plan-2.21.20.pdf> (last visited Apr. 27, 2021); see also Charles Hamilton Houston Institute for Race and Justice, *Affirming Equal Rights: A Community-Guided Assessment to Further Fair Housing* (June 6, 2020), <https://charleshamiltonhouston.org/events/affirming-equal-rights-a-community-guided-assessment-to-further-fair-housing>. Due to Boston Mayor Martin Walsh's nomination as the new U.S. Secretary of Labor, an Executive Order promulgating the final assessment has not yet been issued during a mayoral transition; the final assessment is accessible online. City of Boston *Assessment of Fair Housing* (Apr. 7, 2021), <http://charleshamiltonhouston.org/wp-content/uploads/2021/04/City-of-Boston-Assessment-of-Fair-Housing.pdf>.

full application of fair housing. The widespread angst related to gentrification is not a surprise in this city, of course. Miletsky & Gonzales reported the following: “Ask anyone in Boston, ‘what’s going on in Roxbury?’ and the word you’re most likely to hear is gentrification. Ask that same question in the predominantly Black neighborhood of Roxbury, and the word you’re probably going to hear is displacement.”<sup>7</sup>

Initially the city administration proposed that Boston could build its way out of a housing and gentrification crisis and put a stop or at least slow down considerably residential and commercial rent increases was widely challenged. The CAC disagreed vehemently with the presumption that building thousands of housing units over a period would, *ipso facto*, lead to lower and more affordable rents. One reason that it was criticized is that rapidly increasing housing supply does not result in housing affordability for everyone, especially in a highly speculative real estate market. In addition, emphasizing increases in the supply of housing is not affirmatively furthering fair housing within the framework of the HUD 2015 Rule.

It was wide community input, especially from protected classes, that moved to join the discussion about gentrification with fair housing. This was very much a grassroots idea and victory in how an assessment of fair housing in Boston should be conducted and developed. It was this same community input, along with the work of CAC and the leadership of City Councilor Lydia Edwards (East Boston), that insisted that zoning changes represented the teeth for this proposition. This view is similar to one shared in a blog by Emily Chong:

Most gentrification occurs because of a lack of policies that value community input, offer equitable rezoning policies, and provide intentional housing options. Without policies that attempt to remedy the trends that cause forced displacement, gentrification will continue to dismantle and displace lower-income communities. To develop such policies, we must recognize the disproportionate and destructive effects of gentrification.<sup>8</sup>

The next section describes how gentrification has been unfolding in Boston over years. The latter is followed by a discussion about how fair housing advocates have utilized fair housing goals and zoning changes to respond to the challenge of gentrification and displacement.

### Gentrification in Boston, Massachusetts

In the context of Boston, gentrification is an economic, class, and racial dynamic in areas of the city that have experienced disinvestment—or lack

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7. Zebulon Miletsky & Tomas Gonzalez, *How Gentrification and Displacement Are Remaking Boston*, BLACK PERSPECTIVES (Nov. 28, 2017), <https://www.aaihs.org/how-gentrification-and-displacement-are-remaking-boston>.

8. Emily Chong, *Examining the Negative Impacts of Gentrification*, GEO. J. ON POVERTY L. & POL'Y (Sept. 5, 2017), <https://www.law.georgetown.edu/poverty-journal/blog/examining-the-negative-impacts-of-gentrification>.

of investment—or economic distress but are nevertheless now experiencing significant (and even rapid . . .) increases in land and real estate values, while attracting relatively significant numbers of new and wealthier renters and homeowners. These same areas may be witnessing a loss of lower-income individuals and families and longtime residents.<sup>9</sup>

Displacement applies to those situations where individuals and families are forced to move due to speculative real estate activity; this dislocation can also include local businesses. Typically, households in these areas are replaced with those that tend to be whiter and wealthier, and smaller in family size.

This city has long historical and racist roots, which is also a fundamental part of the story of gentrification. Decades ago, federal policies that were meant to address the needs of working-class Americans have largely excluded or minimized comparable benefits to people of color. During the Great Depression, the National Recovery Administration offered more jobs and paid higher wages to white workers, and the Federal Housing Authority (FHA) would not insure mortgages in neighborhoods that were home to communities of color, or in “white” neighborhoods that did not incorporate racially restrictive covenants. In Boston, even when the worst of the FHA policies changed in the 1960s, a local plan to address lending disparities by providing low-interest loans to homebuyers of color instead further increased segregation by restricting these loans to Mattapan, parts of Dorchester, and other city areas where the majority of Black and Latinx persons live today.<sup>10</sup>

Black residential patterns were a result of racist real estate practices and hostile attitudes towards Blacks, even to the point of using violence to prevent the integration of neighborhoods or public schools. Richard Rothstein recently documented a history of how Black communities became disinvested, and suburbs turned into bastions of white-based political and economic, and cultural power.<sup>11</sup> Rothstein’s work is a reminder of a decades-old genre of urban literature documenting and analyzing how Black, Latinx, and Asian urban communities were formed on the basis openly *de jure* and subtle

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9. James Jennings, *Gentrification as Anti-Local Economic Development*, 23 TROTTER REV. 2, 7 (Aug. 2016).

10. See, Lew Finfer, *The “Good Intentions” Program That Devastated Boston’s Neighborhoods*, BOS. GLOBE (Jan. 18, 2019), <https://www.bostonglobe.com/opinion/2019/01/18/the-good-intentions-program-that-devastated-boston-neighborhoods/7ZWLqOYfM03SaTBjN4jRiK/story.html>; see also GERALD GAMM, *URBAN EXODUS: WHY THE JEWS LEFT BOSTON AND THE CATHOLICS STAYED* (2009).

11. RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); see also IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (2005).

*de facto* racist policies and practices on the part of white-controlled public and private institutions and white vigilante groups.<sup>12</sup>

Black neighborhoods emerged in a context of suburb-based geographic racism throughout the Boston metropolitan region. In many instances, inner and outer suburbs represented physical and zoning-defined bulwarks against the inclusion of Blacks and other people of color. Zoning regulations were used to excuse, in effect, blatant or subtle racial discrimination throughout the Boston metropolitan region.<sup>13</sup> The Fair Housing Center of Greater Boston has documented a long history of suburban municipalities using zoning regulations to control density and protect open space to restrict access to Black Americans and Latinx families.<sup>14</sup> The effects of these practices are reflected today in Boston's continuing segregation. A 2017 *Boston Globe* series exposed the existing sectors of Bostonian life, including education, health, media institutions which still reflect racial segregation and limit access to high quality care due to racial prejudice.<sup>15</sup> In 2018, another *Globe* piece showed that the city's public schools are more segregated today than in earlier periods.<sup>16</sup>

Today the same areas that Blacks were confined to, and then joined by growing number of Latinx persons, are exploding in terms of land value. Speculative real estate is contributing to major movement of wealthier, mostly white households into these areas. Gentrification has emerged as one of the city's greatest challenges. The city-issued report *Housing a Changing City: Boston 2030* states that gentrification is alarming: "Today, there are only four neighborhoods with no significant signs of gentrification. Ensuring that long-time residents can remain in their homes is critical to the stability of our neighborhoods."<sup>17</sup> Further,

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12. Other studies showing how race and racism molded urban communities and role of local government include ALLAN H. SPEARS, *BLACK CHICAGO: THE MAKING OF A NEGRO GHETTO* (1967); HAROLD X. CONNOLLY, *A GHETTO GROWS IN BROOKLYN* (1977); DOUGLAS HENRY DANIELS, *PIONEER URBANITES: A SOCIAL AND CULTURAL HISTORY OF BLACK SAN FRANCISCO* (1990); ADRIAN X. ESPARZA & ANGELA J. DONELSON, *COLONIAS IN ARIZONA AND NEW MEXICO: BORDER POVERTY AND COMMUNITY DEVELOPMENT SOLUTIONS* (2008); THOMAS SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* (2014).

13. MASS. STATE ADVISORY COMM. & MASS. STATE COMM'N AGAINST DISCRIMINATION, *ROUTE 128: BOSTON'S ROAD TO SEGREGATION* (1975), <https://files.eric.ed.gov/fulltext/ED118666.pdf>.

14. The Fair Housing Center of Greater Boston has ceased operations due to funding issues, but information can still be retrieved from its website, <https://www.bostonfairhousing.org>.

15. BOS. GLOBE (Dec. 10, 2017).

16. BOS. GLOBE (Aug. 4, 2018); see also Catherine Elton, *How Has Boston Gotten Away with Being So Segregated for So Long?*, BOS. MAG. (Dec. 8, 2020), <https://www.bostonmagazine.com/news/2020/12/08/boston-segregation>.

17. CITY OF BOSTON, *HOUSING A CHANGING CITY: BOSTON 2030*, at 16 (2014), [https://www.boston.gov/sites/default/files/embed/h/housing\\_a\\_changing\\_city-boston\\_2030\\_full\\_plan.pdf](https://www.boston.gov/sites/default/files/embed/h/housing_a_changing_city-boston_2030_full_plan.pdf).

Gentrification puts increased pressure on moderately priced existing housing, making it less and less affordable to low- or middle-income households. This can quickly change the nature and economic dynamics of a neighborhood and make it difficult for long-term residents to stay in their community. It is not acceptable that residents who worked diligently to strengthen their community could potentially be priced out of their neighborhoods.<sup>18</sup>

The explosion of real estate activity in predominantly Black, Latinx, and Asian areas of the city may have been slowed temporarily because of COVID-19, but it is now continuing. Landlords and developers are again raising rents, pushing evictions, and allowing previously subsidized housing to become market based because of the loss of “expiring use” regulations. As reported in *The Bay State Banner*, “While the coronavirus epidemic . . . slowed the pace of real estate development during the spring and early summer, the pace has picked up again, and with it, concerns about the city’s development process”<sup>19</sup>

Gentrification and resulting displacement are having a significant and disparate impact on communities of color in several of Boston’s neighborhoods, including Chinatown, East Boston, and parts of Dorchester and Roxbury. This effect is coupled with continuing racial inequality and poverty in these communities of color. According to the American Community Survey (ACS) 2014–2018 5-Year Estimates, the city’s overall poverty rate for all persons was 20.2% or one fifth of the city’s estimated population of 679,413 persons.<sup>20</sup> While only 11.7% of whites (who are not Latinx) were reported in poverty, 23.6% of all Blacks, 29.9% of all Asians, and 31.3% of all Latinx persons were impoverished. And a whopping 86.8% of all children seventeen years and under in poverty were Black and Latinx.

Whites (not Latinx) who hold an associate or bachelor’s degree show average wages and salaries at \$56,943, compared to Blacks at \$38,898 and Latinx persons with the same degree at \$40,727. These gaps remain controlling for school level, educational attainment, work experience, and occupation. Black male unemployment rate (ages 16 to 64) is 13.2% and for Black women it is 9.5%. White males (not Latinx) have an unemployment rate 5.6%, and white women (not Latinx) have an even lower rate at 3.8%. Asian male and Asian female unemployment is basically the same at 7.3% and 7.7% respectively. Latinx males have a 9.2% unemployment rate and Latinx women, 9.9%. These stark racial differences have persisted over both a period of major economic turmoil during the Great Recession (ACS 2008–2012), and period of post Great Recession recovery for Boston (ACS 2013–2017).

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18. *Id.* at 88.

19. Yawu Miller, ‘A Gold Rush’ for Local Real Estate, *BAY STATE BANNER* (Sept. 30, 2020), <https://www.baystatebanner.com/2020/09/23/a-gold-rush-for-local-real-estate>.

20. U.S. Census Bureau, American Community Survey 5-Year Data (Dec. 10, 2020), <https://www.census.gov/data/developers/data-sets/acs-5year.html>.

Gentrification is reflected in multiple ways: implicit subsidy or unfair advantage for wealthier newcomers; increasing housing prices and loss of housing affordability, especially in communities of color; eviction waves based on speculative real estate practices; instability and closing of small and neighborhood businesses; physical and social capital displacement in Black, Latinx and Asian communities; and public health and public education challenges associated with housing insecurity. The next section explains these facets of gentrification in greater detail.

### Gentrification as Subsidy and Unfair Advantage for Wealthier Newcomers

Despite extensive economic inequality, it is important to acknowledge the history and role of resident voices in advocating for racial and spatial equality in Boston. Earlier struggles by longtime residents have laid a foundation for subsequent improvements in the quality of life in these neighborhoods, an important fact that is often left out of some scholarly and popular mediums about supposed benefits of gentrification. It can be argued that, due to the earlier struggles that low-income and working-class families endured to make their neighborhoods better, a sort of “subsidy” for newer and wealthier households has resulted. Or, as described by Robert Terrell, a long-time housing and transportation activist, and former executive director of Fair Housing Center of Greater Boston, the presence of low-income and working-class people have kept the space “warm” for gentrify-ers, while longtime residents were experiencing disinvestment and lax government services.<sup>21</sup>

An editorial in the *Our Streets, Our Stories: Learn 2 Listen Media Project* describes similarly:

Imagine a large working-class family, who’ve been renting a home for decades. . . . The parents work 40 hours a week, sometimes putting in a few hours of overtime, and still, they struggle to live a respectable existence, capable of only making ends meet, trying to provide a good life for their children. Now imagine a developer who is looking to make profit from the same community, a community that has been disinvested from and ignored for decades by landlords . . . as well as the majority of the affluent class—not by its residents.<sup>22</sup>

The next step is for landlords to increase rents or build luxury housing resulting in displacement of residents who, as Terrell explains above, have been keeping the land and space warm for those who can pay the higher rents.<sup>23</sup>

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21. James Jennings *Gentrification as Anti-Local Economic Development: The Case of Boston, Massachusetts*, 23 *TROTTER REV.* 1, 11 (2016), <https://sites.tufts.edu/jamesjennings/files/2018/06/articlesGentrificationAnti-LocalEconomic2016.pdf>.

22. *Our Streets, Our Stories: Learn to Listen Media Project*, STREETS ORGANIZING FOR LIBERATION (July 17, 2015), <https://solstreetsorganizingforliberation.wordpress.com/about-2>.

23. Jennings, *supra* note 21 at 11 parenthetical (discussing interview with Robert Terrell).



At times, gentrifying spaces are associated with improvements in municipal services and public transportation. Longtime residents in communities of color are not against any of these kinds of improvements but they might wonder if they are the intended beneficiaries, even though it is they who have been asking and organizing for improvements. This issue was described by a long-time Cape Verdean resident who lived in the predominantly Black neighborhood of Mattapan: "In a community I grew up in, I can now get easily lost due to all the construction and development . . . which residents know nothing about, [nor have] control over its direction."<sup>24</sup> Another resident commented, "We always knew that our community was a diamond in the rough, and we struggled for years to refine it; now others, outside of our community, only see a diamond . . . I don't want them to move out the people that have been here in this diamond in the rough. All of a sudden, you want to shine it, polish it [up] and make it a great place . . . no, it's always been like this."<sup>25</sup>

Another example of how local struggles for improving services such as transportation access emerges as a subsidy for wealthier newcomers is provided on the website of *City Life Vida Urbana*, a grassroots organization working with residents of the Fairlawn Apartments in the Mattapan neighborhood:

Although Mattapan is located within the city, it did not have a stop on the Fairmount Commuter rail line, which had passed through the community for decades. Mattapan residents, along with civic leaders and community activists, believed a train stop in Mattapan would help Mattapan become more accessible and encourage better economic development. For nearly 20 years, these residents worked diligently to bring this train stop to their community. The new Blue Hill Avenue stop on the Fairmount line opened in February 2019. . . . In July of 2018, months before the new Blue Hill Avenue stop opened, DSF Group, which is managed by Corcoran Management Company, purchased Fairlawn Apartments for \$65 million dollars. They quickly rebranded Fairlawn Apartments as "SoMa Apartments at the T" as a means to erase the history and culture of the Mattapan community.<sup>26</sup>

Ironically, residents in this neighborhood have struggled for decades, pushing to ensure that a rail transit line, the Fairmount Line, would be accessible for abutters in predominantly Black neighborhoods along the various stops.<sup>27</sup>

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24. JAMES JENNINGS, LISETTE DESOUZA, TRINA JACKSON & CATALINA TANG YAN, COMMUNITY VOICES FROM THE FAIRMOUNT CORRIDOR PROJECT: IMPRESSIONS AND IDEAS ON TWO DECADES OF CHANGE 20 (Dec. 2019), <https://sites.tufts.edu/jamesjennings/files/2020/01/reportsCommunityVoicesFairmoun2019.pdf> (research report prepared for The Boston Foundation).

25. *Id.*

26. City Life/Vida Urbana, Fairlawn Tenant Association Petition, [https://www.clvu.org/fairlawn\\_tenant\\_association\\_petition](https://www.clvu.org/fairlawn_tenant_association_petition) (last visited Apr. 23, 2021).

27. JENNINGS, DESOUZA, JACKSON & TANG YAN, *supra* note 24.

Marketing language used by real estate agents is clearly not meant for long-time residents:

It's all right here! At SoMa Apartments, you will find the convenience you have been looking for along with the comforts that make a home truly enjoyable. SoMa Apartments has a suburban feel in an urban location, two blocks from the heart of Mattapan Square and its many shops and services. Residents enjoy immediate access by car or public transit via the MBTA Commuter Line to universities, major medical centers, recreation, and the many cultural activities that the Greater Boston area has to offer.<sup>28</sup>

SoMa stands for "Southern Mattapan," a term not ever heard or used by long-time Mattapan residents and activists. The average monthly gross rent for an area within one tenth of a mile radius around Fairlawn Apartments was reported at \$1,200 in the ACS 2014–2018 five-year survey; the rents asked by the developer and associated with the company's new name, SOMA Apartments, was reported at approximately \$1,800. This figure means that many families and long-time residents, and where twenty-five percent of all family households are comprised of four persons or more, and their average income for renters is approximately \$24,000, will have to move in the face of rent increases.

### **Increasing Housing Prices and Loss of Affordability**

A major challenge for the city is the availability of affordable and low-income housing. As stated in the city's Consolidated Plan,

Boston's housing market is a very strong, extremely high-cost market, both for rental housing and for ownership housing. The citywide median sales price increased for the seventh year in a row, rising 4% above last year's record high, from \$575,000 in 2016 to \$600,000 in 2017. . . . Rents have skyrocketed to a median rent of \$2,037 in 2016. While this is good news for homeowners and the housing industry, this is bad news for low-income renters and prospective homebuyers.<sup>29</sup>

Rents have continued to rise since the latter was reported, presenting an especially dire situation for extremely low-income households who have incomes of thirty percent or less of the area median income, and the very low-income with households with incomes at fifty percent or less.

Residents in predominantly, Black, Latinx, or Asian-American neighborhoods find that they are increasingly unable to afford to live in their old neighborhoods or are actively being displaced through rapid and relatively high increases in housing costs. Their spaces are being replaced

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28. *SoMa at the T*, MYNEWPLACE, <https://www.mynewplace.com/apartment/soma-at-the-t-mattapan-ma-108830273432> (last visited Apr. 9, 2021).

29. City of Boston, 5-Year Consolidated Plan 46 (July 1, 2013–June 30, 2018), [https://www.cityofboston.gov/images\\_documents/Consolidated%20Plan%20\(July%202013%20to%20June%202018\)\\_tcm3-43046.pdf](https://www.cityofboston.gov/images_documents/Consolidated%20Plan%20(July%202013%20to%20June%202018)_tcm3-43046.pdf).

by households that tend to be wealthier and whiter.<sup>30</sup> Across the city, but especially in these places, many residents live with anxiety, concern, and a sense of vulnerability that they may not only lose their homes but their sense of community as well; and COVID-19 has served to highlight these fears.

Strategies for lessening housing cost burdens are critical for Boston's livability, but the proportionality of the problem is greater for households with lower incomes. The city-issued report, *Resilient Boston: An Equitable and Connected City*, states that "21 percent of Boston households spend more than half their incomes on housing. Low-income neighborhoods with sizeable communities of color—notably East Boston, Mattapan, and Roxbury—feel the effects of this trend most acutely"<sup>31</sup> CAC raised the particular definition of housing affordability as a potential problem in assuring fair housing for families with the lowest incomes.

Housing affordability has been defined by HUD as a household not earning more than eighty percent of the city's metropolitan area median income. CAC insisted, however, that determining housing affordability based on a city or regional median income levels disadvantages and restricts housing opportunities for thousands of low-income households. In effect, the latter are placed in a housing affordability bucket with households reporting considerably higher incomes. The differences in median incomes are also racial. Based on the ACS 2014–2018 median household income for Blacks is \$42,175, but for whites (not Latinx) it is \$98,342. White households, regardless of composition, almost double the earnings of Black, Asian, and Latinx households throughout the city. This income amount compares to Asians at \$43,891 and Latinx persons at \$34,852.

Individually or cooperatively owned homeownership can be a buffer in reducing displacement. But homeownership is low in Boston's Black and Latinx communities. Only 29.7% of Blacks own homes in Boston, compared to 44.5% for whites; the rate for Asians is 28.6% and for Latinx persons is a paltry 16.2% according to the ACS 2014–2018. A major problem in increasing Black homeownership in Boston is continuing rejections of home purchase loans.<sup>32</sup> But it is also that Black and Latinx homeowners have had difficulty in securing financing for home improvements.

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30. Mary Moore, *Roxbury's Changing Face*, Bos. Bus. J. (Nov. 15, 2013), <https://www.bizjournals.com/boston/print-edition/2013/11/15/roxburys-changing-face.html>.

31. MAYOR'S OFFICE OF RESILIENCE AND RACIAL EQUITY, *RESILIENT BOSTON: AN EQUITABLE AND CONNECTED CITY* 87 (2017), [https://www.boston.gov/sites/default/files/file/document\\_files/2017/07/resilient\\_boston.pdf](https://www.boston.gov/sites/default/files/file/document_files/2017/07/resilient_boston.pdf).

32. Jim Campen, *Changing Patterns XXIV: Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston*, *Greater Boston and Massachusetts*, 2017, MASS. CMTY. & BANKING COUNCIL (2018), <http://mcbc.info/publications/mortgage-lending>; see also FED. RSRV. BANK BOSTON, *HOME MORTGAGE DISCLOSURE ACT (HMDA) DATA FOR NEW ENGLAND* (Oct. 29, 2018), <https://www.bostonfed.org/data/data-items/home-mortgage-disclosure-act-hmda-data-for-new-england.aspx>.

Residents face a huge problem with severe housing costs (where households pay fifty percent or more of their household income for housing costs). Households affected by severe housing costs do reflect racial and ethnic differences. In many census tracts in predominantly Black and Latinx neighborhoods (Roxbury, Mattapan, Dorchester, East Boston), one third or more of all households pay gross rents that are fifty percent or greater than their household income. Map 1 shows how concentrations of Black and Latinx residents are strongly associated with these places.

Map 1: Severe Housing Cost Burden by Neighborhoods and Concentration of Black and Latinx Residents



Proportion of HH Paying 50% or More Income in Gross Rent

- Between 0 and a Fifth of all HH
- Between a Fifth and a Third of all HH
- One Third or More of All HH

Latinx Residents Concentration

1 Dot = 100 Persons

Blacks Resident Concentration

1 Dot = 100

### Evictions Waves Based on Speculative Real Estate Practices

Rapidly rising rents in low-income and the poorest areas contribute to the displacement of families and children, and primarily Black, Latinx, and Asian households. One report authored by City Life/Vida Urbana and MIT found that “[s]eventy percent of market-rate eviction filings occur in neighborhoods where the majority of residents are people of color. . . .”<sup>33</sup> Also reported is the fact that “[m]arket-rate eviction filings are more likely to occur in census tracts where there’s a larger share of Black renters, controlling for other variables.”<sup>34</sup> While there have been eviction moratoriums as a response to COVID-19, many community activists expect a floodgate of evictions in low-income communities after these kinds of moratoriums expire.<sup>35</sup> This same report notes that evictions are linked to real estate profit-motivated interests and are not necessarily occurring due to non-payment of rent. In many places, evictions are due to developers buying properties and then asking longtime residents to leave or simply raising rents to unaffordable levels.

### Instability and Closing of Small and Neighborhood Businesses

Gentrification poses threats to small neighborhood-based businesses that have helped to guarantee a degree of economic and cultural vitality in many neighborhoods in Boston. The smaller neighborhood-based businesses not only generate wealth but keep it in circulation longer at the local level. Many owners of smaller businesses see themselves as part of a community. This is the sector that employs thousands of residents and generates disposable income that remains in neighborhoods for longer periods than is the case with corporate chain stores. They have partnered with nonprofits and community-based organizations on a range of issues. This was the case with businesses such as Bella Luna/Milky Way that had to close in 2009 due to rent increases in the range of seventy to eighty percent, or Sonia’s Bridal & Quinciniñera, which closed due to displacement in a previously predominate Latinx neighborhood.<sup>36</sup> These kinds of beneficial externalities are in danger as gentrification imposes extraordinary costs on

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33. DAVID ROBINSON & JUSTIN STEIL, CITY LIFE/VIDA URBANA, EVICTIONS IN BOSTON: THE DISPROPORTIONATE EFFECTS OF FORCED MOVES ON COMMUNITIES OF COLOR 36 (2020), [https://d3n8a8pro7vhmx.cloudfront.net/themes/5eee7e564445ea4f9a6f3080/attachments/original/1592786979/EvictionReport\\_Final\\_Spreads.pdf?1592786979](https://d3n8a8pro7vhmx.cloudfront.net/themes/5eee7e564445ea4f9a6f3080/attachments/original/1592786979/EvictionReport_Final_Spreads.pdf?1592786979).

34. *Id.* at 90.

35. Sofia Rivera, *The Coming Eviction Crisis Will Be Worse Than You Think*, BOS. MAG. (July 9, 2020), <https://www.bostonmagazine.com/property/2020/07/08/boston-eviction-moratorium-august>; see also Erin Tiernan, *Landslide of Evictions Threatens to Upend Boston’s Black Communities, Report States*, BOS. HERALD (June 28, 2020), <https://www.bostonherald.com/2020/06/28/landslide-of-evictions-threatens-to-upend-bostons-black-communities-report-states>.

36. For information about some of these businesses, see Ashli Molina, *Latina Entrepreneurs Aim to Thrive as Hyde Square Changes*, JAMAICA PLAIN NEWS (Nov. 20), 2014),

small and neighborhood-based businesses, while the resident market associated with this sector increasingly faces displacement.

### Physical and Social Capital Displacement

Some scholars and journalists proffer gentrification as “urban revival,” since wealthier, white newcomers are merely buying vacant or unused properties; thus, displacement is not really taking place.<sup>37</sup> This suggests a static situation where wealthier households are moving into these areas, but nothing then happens; they merely fix up parts of the neighborhood. An assumption exists that new wealth and poverty co-exist smoothly and that racial or class tensions are insignificant. Overwhelming testimony on the part of renters in many community meetings and news coverage of displacement in neighborhood newspapers in Boston belie this claim.<sup>38</sup>

One thing is certain: parts of the city with the highest poverty rates are attracting wealthier households with economic resources that are considerably higher than the median incomes of longtime residents. For example, Map 2 shows the movement of wealthier households into census tracts and neighborhoods in Boston with poverty rates higher than the city’s overall twenty percent impoverishment rate.<sup>39</sup> The light purple tracts show where new residents, moving from other counties in Massachusetts, have a median income at least \$5,000 to \$10,000 *higher* than residents reporting the same residence one year earlier. The darker purple tracts are where new movers from other counties in Massachusetts have median incomes \$10,000 and much higher than longtime residents. Many of these areas also reflect relatively high poverty rates among residents.

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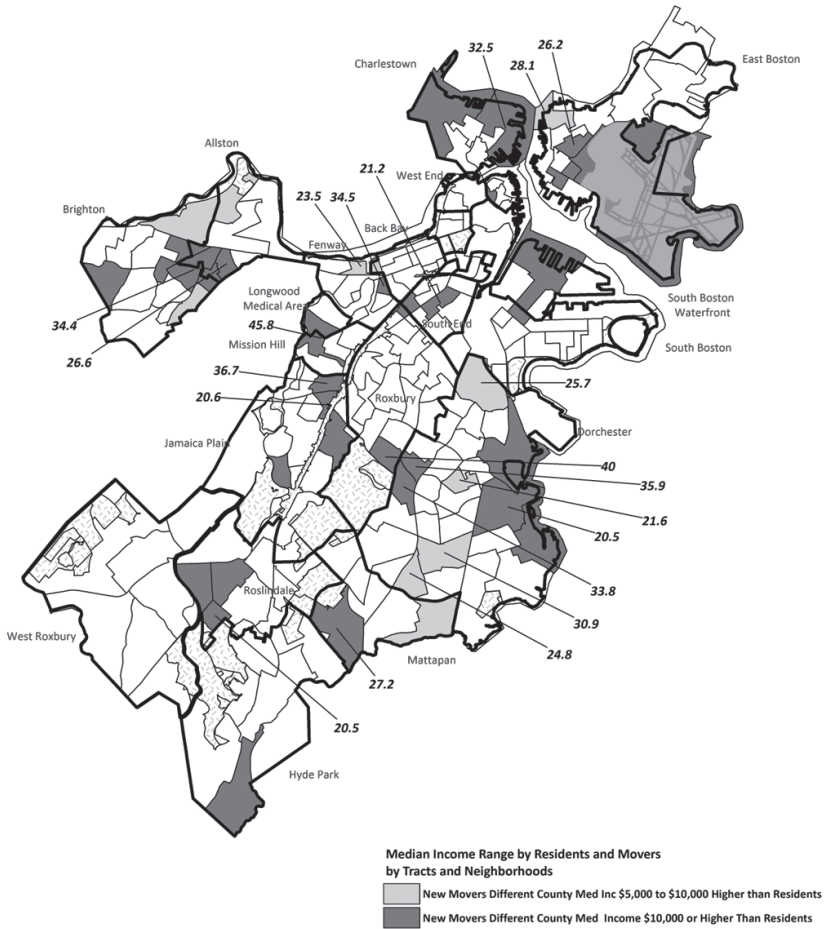
<https://www.jamaicaplainnews.com/2014/11/20/latina-entrepreneurs-aim-to-thrive-as-hyde-square-changes/5689>.

37. Alan Ehrenhalt, *The ‘G’ Word: Gentrification and the American City*, GOVERNING (Feb. 2015), [https://drjdbij2merew.cloudfront.net/GOV/GOV\\_Mag\\_Feb15.pdf](https://drjdbij2merew.cloudfront.net/GOV/GOV_Mag_Feb15.pdf).

38. JAMES JENNINGS, BOB TERRELL, JEN DOUGLAS, KALILA BARNETT & ASHLEY E. HARDING, UNDERSTANDING GENTRIFICATION AND DISPLACEMENT: COMMUNITY VOICES AND CHANGING NEIGHBORHOODS (Aug. 2016), <https://sites.tufts.edu/jamesjennings/files/2018/06/reportsUnderstandingGentrificationDisplacement2016.pdf>; see also Jennings, DeSouza, Jackson, and Tang Yan, *supra* note 24.

39. This data is based on the American Community Survey 2013–2017 Five-Year Estimates and shows the median income of persons moving from a different county within the state of Massachusetts compared to the median income of residents in the same house one year ago, and the poverty rate by census tracts.

Map 2: Median Income \$5,000 and \$10,000 Higher by Tracts and Neighborhoods Where the Poverty Rate for Residents is 20% or Higher



This kind of migration contextualized with systemic racial inequalities can trigger what sociologist Elijah Anderson describes as the conversion of community spaces into “White spaces,” where the presence of Blacks, Latinx and other people of color is implicitly (and explicitly) questioned by new residents. This is because “[a]s demographics change, public spaces are subject to change as well, impacting not only how a space is occupied and by

whom but also the way in which it is perceived.”<sup>40</sup> In a short period of time, Black longtime residents lose a sense of belonging in their own community and can feel disempowered suddenly to the possibility that “[a]lmost any white person present in the [new] white space can possess and wield this enormous power. And those who feel especially exercised and threatened by the rise of blacks may feel most compelled to wield that power.”<sup>41</sup>

In Boston, new and wealthier white residents are not “mixing” in with long-time low-income and working-class Blacks that have lived in these communities for generations. As one participant reported in another study: “When you go to the community meetings and those people are resent some of what is talked about is not ‘how do we share the space?’ but how do we make the space serve our own needs and desires?”—more cafes, a dog park, more greenery. They’re putting those things as a priority where folks of color are not. . . .”<sup>42</sup> Another long-standing Roxbury resident noted:

When we moved in decades ago, we did a lot to try to bring the community back in line, confront heroin, etc. . . . We’ve always had clean-ups and concerts and events for years. Now that the White people are here, they send out emails saying, “First Street Clean-Up” or “First Concert in the Park” and when people challenge them there’s this sense of arrogance. Because we’ve been here 45 years, we used to attend all the meetings and every little thing, but now we’ve gotten older and we don’t really feel like it and how many battles can we fight. . . . You go to the meeting and you try to have a conversation around something like, “It’s not the first concert” and they say, “What difference does it make? We are trying to start a new beginning” and they are so arrogant you don’t feel like talking to them. There’s a very clear racial divide, the Black people don’t talk with the White people and that’s the way it is.<sup>43</sup>

### Public Health and Public Education Challenges Associated with Housing Insecurity

Urban planners and public health experts have documented a range of negative effects on residents due to sudden physical disruptions or new urban designs (many times presented as “improvements”) that impact the health of residents.<sup>44</sup> A recent study by the National Community Reinvestment Coali-

40. Elijah Anderson, “*The White Space*,” 1 *SOCIO. RACE & ETHNICITY* 10, 11 (2015), [https://sociology.yale.edu/sites/default/files/pages\\_from\\_sre-11\\_rev5\\_printer\\_files.pdf](https://sociology.yale.edu/sites/default/files/pages_from_sre-11_rev5_printer_files.pdf).

41. *Id.* at 15

42. JENNINGS, TERRELL, DOUGLAS, BARNETT, AND HARDING, *supra* note 38, at 19.

43. *Id.*

44. See Stephan Danley, *Why Do Low-Income Residents Oppose Development Even When Displacement: There’s More Than One Way to Be Excluded from Your Community*, SHELTERFORCE (Sept. 2, 2020), <https://shelterforce.org/2020/09/02/why-do-low-income-residents-oppose-development-even-when-displacement-risk-is-low>; Mindy Thompson Fullilove, *Root Shock: Consequences of African American Dispossession*, 78 *J. URB. HEALTH* 1 (2001), [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3456198/pdf/11524\\_2006](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3456198/pdf/11524_2006)



tion shows that these effects have become exacerbated within the COVID-19 pandemic.<sup>45</sup> COVID-19 has not only exposed housing inequality but made it worse. There are many places in Boston which report higher rates of overcrowding, multi-generation households, and higher rates of sub-families. This illustrates a strong nexus between the quality of public health and the pursuit and application of fair housing. Family moves due to increasing rents or displacement also can have a deleterious effect on the learning experiences of children. Consistent learning situations become unstable when home addresses are continually changing or just in the threat of changing.<sup>46</sup> Anxiety about unstable housing conditions affects the sense of well-being on the part of children and families. Thus, access to quality education for children who face housing insecurity is also a fair housing issue.

### Fair Housing and Zoning as Anti-gentrification

The Fair Housing Act is a conceptual umbrella that can be utilized in responding to gentrification in Boston due to its intersectionality in approaching what are obstacles to guaranteeing fair housing for protected groups. But the pursuit and guarantee of fair housing must be aggressive and proactive and not simply prohibit discrimination:

While the obligation not to discriminate is critical, it is the obligation to affirmatively further fair housing that is most overlooked and/or misunderstood, and which establishes the requirement that the Commonwealth and its political subdivisions assume a proactive posture with respect to fair housing. . . . Liability may arise when there is a failure to affirmatively further fair housing as required. Such a failure may include perpetuating racial segregation patterns and adopting policies and activities that have a disparate impact on a protected class.<sup>47</sup>

More recently, this intersectional scope of fair housing was reaffirmed by the new Biden administration declaring that federal departments and agencies are required to

administer their programs and activities relating to housing and urban development . . . in a manner affirmatively to further fair housing (42 U.S.C. 3608(d)). . . . This is not only a mandate to refrain from discrimination but a

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\_Article\_8.pdf; Russell Lopez, *Gentrification and Health: Patterns of Environmental Risk*, in *UPROOTING URBAN AMERICA: MULTIDISCIPLINARY PERSPECTIVES ON RACE, CLASS & GENTRIFICATION* 143 (Horace R. Hall, Cynthia Cole Robinson & Amor Kohli eds., 2014).

45. Jason Richardson, Bruce C. Mitchell, Jad Edlebi, Helen C.S. Meier & Emily Lynch, *The Lasting Impact of Historic "Redlining" on Neighborhood Health: Higher Prevalence of COVID-19 Risk Factors*, NAT'L CMTY. REINV. COAL. (2020).

46. Judith N. Desena, "What's a Mother to Do?": *Gentrification, School Selection, and the Consequences for Community Cohesion*, 50 AM. BEHAV. SCIENTIST 241 (2006); Diana Formoso, Rachel Weber & Marc Atkins, *Gentrification and Urban Children's Well-Being: Tipping the Scales from Problems to Promise*, 46 AM. J. CMTY. PSYCH. 395 (2010).

47. MASS. DEP'T HOUS. & CMTY. DEV., ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING: ACCESS TO OPPORTUNITY IN THE COMMONWEALTH 19 (Jan. 2014), <https://www.mass.gov/files/documents/2017/10/25/2013analysis.pdf>.

mandate to take actions that undo historic patterns of segregation and other types of discrimination and that afford access to long-denied opportunities.<sup>48</sup>

The public meetings noted above, as well as review of hard data and government reports, highlight the face of Boston gentrification and how strong fair housing can be a tool to respond to the challenges of gentrification and displacement. Working closely with city representatives and based on extensive public testimony, the CAC identified fourteen major goals associated with specific objectives and recommendations for government action under a fair housing umbrella. The adopted goals include the following:

- (1) Increase Housing Availability and Accessibility for Older Adults and People with Disabilities;
- (2) Reduce and Prevent Homelessness;
- (3) Build and Strengthen Regional Strategies to Create Housing and Further Fair Housing;
- (4) Expand Housing Choice for Voucher Holders;
- (5) Redevelop and Preserve Existing Public and Income Restricted Housing;
- (6) Enhance Fair Housing by Creating Economic Opportunity;
- (7) Use Zoning as a Fair Housing Tool;
- (8) Reduce the Disparity in Homeownership Rates by Race and Ethnicity;
- (9) Develop Practices across Agencies that Instill the Use of an Equity Lens;
- (10) Promote Equitable Access to Housing and Reduce and Eliminate Discrimination, Both Intentional and Non-Intentional;
- (11) Ensure the Equitable Distribution of City Resources Based on Need by Providing Supports for Rent-Burdened Residents and Residents Facing Potential or Actual Displacement;
- (12) Increase Resources for Housing and Homelessness;
- (13) Create Healthy Homes and Promote Collaboration between Efforts to Address Housing, Health, and Safety; and
- (14) Address Discrimination Against LGBTQIA People and Create LGBTQIA Inclusive Housing.<sup>49</sup>

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48. See White House Press Release, Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies (Jan. 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies>.

49. See Charles Hamilton Houston Institute for Race & Justice, Goals of the City of Boston to Affirmatively Further Fair Housing (Apr. 10, 2020), <http://charleshamiltonhouston.org/wp-content/uploads/2020/05/AFFH-Goals-COB-2.21.20-Updated-4.10.20.pdf>.

The final Assessment includes information about how these fourteen goals should be implemented and monitored by government. To reiterate, the fourteen goals reflect how residents and community activists approach the meaning of comprehensive fair housing. It reflects the belief that fair housing goes beyond housing supply or housing affordability issues but, rather, needs to be conceptualized and approached as intersectional in the lives of people and their communities. It is this framework which pointed to the need to amend Boston's zoning codes.

### Zoning as "Teeth" for Fair Housing

CAC showed that an intersectional assessment and implementation of fair housing as framed by national legislation, policies, and judicial decisions can serve as a framework for addressing gentrification and displacement. It could be a tool to reduce the impacts of racial inequality and inequity.<sup>50</sup> But the latter was not achieved because Boston zoning codes inhibited the intersectionality of fair housing by not prioritizing it, or even including any mention of fair housing over decades of zoning regulations and codes. The CAC in coalition with many community-based organizations and the leadership of Boston City Councilor Lydia Edwards and other City Council members insisted that zoning reflect fair housing requirements.

Spearheaded by Councilor Edwards, this effort resulted in a major victory when, on December 9, 2020, Mayor Martin Walsh issued a press release supporting the call to the incorporate fair housing language into the city's zoning codes.<sup>51</sup> It would be the first time that zoning procedures and regulations would have to reflect enforcement of fair housing. Boston's Zoning Commission unanimously adopted language on January 13, 2021, to reflect this change, and Mayor Walsh signed off on the new regulations the very next day.<sup>52</sup>

Beginning March 2021, any large-scale development proposals will not be approved unless they reflect strong fair housing goals. Now, big developers cannot submit proposals to build anything in Boston unless they first meet specific fair housing criteria. At a minimum, this change can slow

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50. The *Bay State Banner* has reported on the growing support of using fair housing in the city's development projects. *E.g.*, Morgan C. Mullings, *Councilor Seeks Fair Housing Zoning Law*, BAY STATE BANNER (Oct. 15, 2020).

51. See Press Release, City of Boston, Boston to Become First Major City in the Nation to Include Fair Housing Requirements in Zoning Code (Dec. 9, 2020), <https://www.boston.gov/news/boston-become-first-major-city-nation-include-fair-housing-requirements-zoning-code>. AFFIRMATIVELY FURTHERING FAIR HOUSING ARTICLE 80, *infra* note 56 (2021) (listing the adopted zoning changes and amendments).

52. For more detail about the genesis of this zoning change, see James Jennings, Kathy Brown, Lincoln Larmond & Robert Terrell, Fair Housing and Zoning: Toward a New Boston?, SHELTERFORCE (Feb. 18, 2021), <https://shelterforce.org/2021/02/18/fair-housing-and-zoning-toward-a-new-boston>; Megan Haberle, *The Making of Boston's AFFH Ordinance: A Brief Oral History*, 30 POVERTY & RSCH. ACTION COUNCIL, Jan.-Apr. 2021, at 3, <https://www.prrac.org/newsletters/jan-apr2021.pdf>.

gentrification or displacement associated with bigger real estate projects. It reflects a lesson observed by Way, Mueller, and Martin in their review of case studies involving gentrifying neighborhoods in Portland, Oregon, Washington, D.C., and Austin, Texas:

Lesson One: Include Strategies for Addressing Displacement in Public Revitalization Projects and Major Infrastructure Investments. . . . In some neighborhoods, the shift from the need for revitalization to the need for anti-displacement measures can occur quickly. When a city institutes revitalization programs or otherwise makes significant investments in a community, such as new transit infrastructure, it should anticipate displacement and incorporate affordable preservation and other displacement mitigation strategies into those plans up front, rather than reacting to this need later on.<sup>53</sup>

Further, “If a city has not addressed displacement up front, it should engage in active monitoring of how its revitalization projects and major infrastructure investments are impacting vulnerable residents and be prepared to act quickly to adapt or revamp its strategies.”<sup>54</sup>

Now developers in Boston have to satisfy “Process Options” and “Market Options.” The former can be deepening the affordability of housing units or increasing the proportion of larger family-size (2+ bedrooms) units or increasing density in order to increase the number of units available to protected classes or agreeing to partner with nonprofits to enable affordable housing construction. Developers must also meet requirements under “Market Options,” which can include providing preference to first-time homebuyers where home-ownership units are proposed; or allowing “last month’s rent and security deposit to be paid in installments for an agreed upon percentage of units or by renters up to a certain income level,” or agreeing to “best practices related to the use of CORI, eviction, and credit records in the tenant screening and selection process, and in marketing of units, for example following Fair Chance Housing guidelines, and/or waiving eviction and credit checks for affordable units especially housing voucher holders.”<sup>55</sup>

In areas of the city designated as reflecting high potential for displacement or historical exclusion of protected classes, developers have to meet higher standards under these options.<sup>56</sup> They may opt to assist

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53. Heather Way, Elizabeth Mueller & Ben Martin, *Uprooted: Local Efforts to Mitigate Displacement in Gentrifying Neighborhoods*, 28 J. AFFORDABLE HOUS. & CMTY. DEV. L. 39, 65 (2019).

54. *Id.*

55. AFFH Assessment and Submission Guide, *Afirmatively Furthering Fair Housing (AFFH) Assessment and Submission and Guide 13* (Mar. 2021) (emphasis omitted), [bostonplans.org/getattachment/7716dd5f-5053-464c-86bc-26c4dd1de28b](https://www.bostonplans.org/getattachment/7716dd5f-5053-464c-86bc-26c4dd1de28b).

56. Criteria for determining the displacement risk in neighborhood areas are detailed in the Boston Planning & Development Agency AFFH Assessment Form. BOSTON PLAN. & DEV. AGENCY, *AFFIRMATIVELY FURTHERING FAIR HOUSING ARTICLE 80* (2021), <http://www.bostonplans.org/housing/affirmatively-furthering-fair-housing-article-80> (choose “AFFH Assessment Form” at bottom of page).

in establishing a local housing stabilization fund or voluntarily deeding “tenants the right of first refusal to purchase property upon conversion” or establishing or contributing to “a neighborhood housing Acquisition Opportunity Program” or supporting mixed-use and local small businesses with “long term flexibly lease options.”<sup>57</sup>

To monitor the enforcement of these new zoning requirements, the Boston Planning & Development Agency (BPDA) is creating an interagency body known as the Boston Interagency Fair Housing Development Committee (BIFDC). As described by the Boston Planning and Development Agency, it will be a body of five city representatives from the Office of Fair Housing and Equity (OFHE), the Department of Neighborhood Development (DND), the Mayor’s Commission for Persons with Disabilities, the Boston Planning & Development Agency, and the Boston Housing Authority (BHA). Currently, CAC is organizing to ensure community participation on this body. It is also insisting that all big development projects—whether public or private—be held to the new fair housing standards. If fully implemented and monitored, this reform can prevent giant development plans to reach approval without a lens of how residents in low-income and working-class areas of the city or the small businesses in these places would be impacted by design, intent, and ultimate beneficiaries of development.

### **Conclusion: Fair Housing Is Full Equality and Cannot Be Siloed**

Fair housing cannot be “silo-ed.” Thus fair housing strategies must reflect connections to public schools, public health, public safety, and economic opportunities. This fundamental intersectionality is consistent with the linking of “fair housing considerations with issues of transportation, employment, education, land-use planning, environmental justice, and access to housing—consistent with Livability Principles developed by the U.S. Department of Housing and Urban Development.”<sup>58</sup> It represents a foundation where fair housing as defined by law, statutory regulations, and judicial decisions can be a community empowerment resource to develop and implement strategies that respond to gentrification by challenging racial, economic, and spatial inequalities in the areas of housing, educational opportunities, employment, health, and public safety.

This point is made by legal scholar Tim Iglesias:

Displacement due to gentrification can become a form of resegregation. Often the tenants being involuntarily displaced are members of protected classes who will not find any viable housing opportunities in the city from

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57. Boston Zoning Code and Affirmatively Furthering Fair Housing Review Procedures and Submittal Requirements 5(Dec. 2020), <http://www.bostonplans.org/getattachment/a5911687-386d-4c39-86bf-5c20874b7319>.

58. METRO. AREA PLAN. COUNCIL, FAIR HOUSING AND EQUITY ASSESSMENT FOR METROPOLITAN BOSTON 7 (2017), [https://www.chapa.org/sites/default/files/Full\\_Fair%20Housing%20and%20Equity%20Assessment%20for%20Metro%20Boston\\_1.pdf](https://www.chapa.org/sites/default/files/Full_Fair%20Housing%20and%20Equity%20Assessment%20for%20Metro%20Boston_1.pdf).

which they are being displaced and who may be forced to move to other cities, often segregated suburbs with few employment, social services, and other opportunities. . . . Under this view, displacement raises fair housing issues and a city's response to displacement is subject to fair housing analysis.<sup>59</sup>

He suggests that cities have an obligation to respond to other issues that inhibit affirmatively furthering fair housing such as, "relief for overcrowding and rent burdened households" and to "help residents preserve their existing community-based safety nets such as access to schools, places of worship, and health care providers." Cities also must emphasize "retaining neighborhood character, the cultural and economic diversity of its neighborhoods, and enhancement of the affordable housing supply."<sup>60</sup>

An example of the intersectionality of fair housing is provided by Williams's review of gentrification and displacement in California. The author notes that an occurrence of "[d]isplacement of residents due to economic pressures . . . [can] perpetuate one or more fair housing issues, such as segregation or disparities in access to employment or educational opportunities."<sup>61</sup> Affirmatively furthering fair housing means that these and other kinds of contributing factors must be addressed by government, and zoning should not inhibit proactive responses.<sup>62</sup>

The making of these links requires that zoning regulations and practices be consistent with strong fair housing goals. The goals adopted by the Boston upon the insistence of CAC and many community groups serve to link adequate and non-discriminatory housing to other areas in the lives of people. If implemented fully and monitored, this action becomes a civic framework to consider how any economic development strategy will help or hurt residents. It means that the availability and adequacy of housing will not be denied based on the whims of developers, or their lack of thought about the well-being of residents. Insisting that zoning is utilized as a fair housing tool will also help the smaller and neighborhood-based businesses which represent such a critical component of Boston's overall economy. Now, zoning can be used to ensure that local businesses, and particularly minority-owned, and women-owned businesses, are protected from speculative real estate activities.

On April 9, 2021, the Boston City Council unanimously adopted the Assessment of Fair Housing and its fourteen goals.<sup>63</sup> This breakthrough in Boston can result in building significant challenges to continuing gen-

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59. Tim Iglesias, *Threading the Needle of Fair Housing Law in a Gentrifying City with a Legacy of Discrimination*, 27 J. AFFORDABLE HOUS. & CMTY. DEV. L. 51, 52 (2018).

60. *Id.* at 55.

61. Renee M. Williams, *Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape*, 28 J. AFFORDABLE HOUS. & CMTY. DEV. L. 387, 391 (2019).

62. *See id.* at 387.

63. City of Boston, *Furthering Fair Housing in the City of Boston* (Apr. 9, 2021), <http://www.boston.gov/news/furthering-fair-housing-city-boston>.

trification—but this is not a panacea. To quote City Councilor Edwards, “[T]he real test is not the signing or even passage of this amendment, but its implementation.”<sup>64</sup> The next phase of work for the CAC and community activism is to ensure that this and all the fair housing goals are implemented fully. One way that this is occurring is advocacy for a mayoral executive order to be signed by the new Acting Mayor Kim Janey, to enshrine fair housing in all the city’s work. There will also be a need to train public officials about what Affirmatively Furthering Fair Housing means in terms of their professional responsibilities in carrying out city policies and programs.<sup>65</sup>

Finally, it will be most important to raise community awareness about this new potential anti-gentrification and anti-displacement tool. This possibility must be continually raised among residents concerned about their housing and community well-being in the face of intense real estate and capital development. Residents must be able to use these goals to become more involved in ensuring their community and collective well-being are not sacrificed or violated by the dreams and proposals of big, and wealthy developers. The residents must be involved to ensure that development happens without displacement and not at the expense of the people and neighborhoods of Boston.

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64. Press Release, City of Boston, Boston to Become First Major City in the Nation to Include Fair Housing Requirements in Zoning Code (Dec. 9, 2020), <https://www.boston.gov/news/boston-become-first-major-city-nation-include-fair-housing-requirements-zoning-code>.

65. *Id.*

