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# The Making of Boston's AFFH Ordinance - A Brief Oral History

In late 2020, the City of Boston announced new legislation amending the city's zoning code to include affirmatively furthering fair housing requirements. The legislation, effective in March 2021, evolved out of extensive local advocacy efforts and community concern around housing issues, spurred in part by the recent Assessment of Fair Housing (AFH) process and related public engagement efforts by the advocacy community. It requires that proposed developments be assessed for both their impact on historical exclusion and displacement risk and that developers identify measures to further fair housing.

Below, members of the Boston advocacy community and City Councilor Lydia Edwards recount some key lessons from the effort to pass this landmark piece of local legislation. This conversation was facilitated by Megan Haberle, Deputy Director, Poverty & Race Research Action Council.

**Nadine Cohen:** I am an attorney at Greater Boston Legal Services, and I used to be on the Board of the Fair Housing Center of Greater Boston. I've been a long-term fair housing attorney and advocate. I got involved early on in the Assessment of Fair Housing (AFH) process that the city of Boston was doing to meet their obligation to Affirmatively Further Fair Housing. I was also part of this community advisory board and have been working with this group and with Councilor Lydia Edwards to get both the AFH and AFFH amendment included in the zoning code.

**Kathy Brown:** I'm from the Boston Tenant Coalition (BTC), which co-anchored the whole AFH organizing process with the Fair Housing Center of Greater Boston. We worked together to help the city create a good AFH, as intended by the Obama administration's framework. [Our community] engagement was really extensive. I'm really proud of all our effort around organizing and engagement. And we've just been supportive since day one of Councilor Edwards' amazing AFFH amendment.

**James Jennings:** I'm a professor

emeritus at Tufts University, and I became involved initially as a consultant to the Boston Housing Authority. The late Bill McGonagle, who I did some work for at the Boston Housing Authority, asked me to come on board and help with the data piece primarily, and then I also became involved in the writing some of the drafts. By the second or third drafts, the city then requested that they borrow me from the BHA. And so, I worked on writing the June 2019 draft report (as we like calling it, the June-tenth report) and presented it to the city.

**Lydia Edwards:** I'm a City Councilor in Boston. I represent District One, which is East Boston, Charlestown, and the North End. Many people are at ground zero for school busing in Charlestown.

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And now East Boston is the home of the single largest private development in the city [the Suffolk Downs redevelopment project]. I am a former - but forever in my heart - practicing attorney at Greater Boston Legal Services. So that's where I met a lot of these folks. I did community organizing for immigrants and domestic workers before I was in politics. I also ran a legal clinic for domestic workers. Currently, I'm doing a lot in housing and zoning. I helped draft and introduced the first version of this zoning amendment.

**David Harris:** I'm with the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School. I've been in this space through the development of the Seaport and everything else. I was the founding director at the Fair Housing Center of Greater Boston. Even though I don't do fair housing directly anymore,

due to my background and racial justice perch, I've continued to work with this committee and the city and to just generally be a thorn in the city's side. It's really such an honor to be able to have a relationship with our elected officials and activists doing this work.

**Megan Haberle (PRRAC):** My first question is: what do you see as the connection between zoning and fair housing, and how did your thinking about that connection inform the creation of this new requirement in Boston?

**Lydia Edwards:** I think what I have learned and what I've seen through the research, especially in Boston is that zoning has been one of the greatest undoers of civil rights and fair housing goals. It has been how the city and local municipalities avoid actually having to integrate and build inclusive communities.

Zoning for too many has been the injury. [Some in power] pretend that it's raceless, classless, and just about density, height, or traffic. One example of this perspective at work in Boston was the creation of the Seaport district. That demonstrated that unless you are intentional in your planning, unless you are actually integrating civil rights in how you design a new neighborhood, you actually injure the underserved. Now you have one of the whitest, richest neighborhoods in Boston, and that was just done recently in a city that is becoming browner. That is the direct connection between zoning and civil rights, and unless we intentionally bring civil rights to zoning, it will injure the moral compass of the city.

Oftentimes the problem is the capitalist understanding that if you build more, you'll get more - there'll be a trickle down to the underserved - or that marketing affordable units, in diverse communities is somehow meeting the obligation to Affirmatively Further Fair Housing.

That's traditionally been how the Boston Planning and Development Agency (formerly Boston Redevelopment Authority) has met its obligation. We'll just tell everybody of all colors that they can't afford to live here. [The AFFH] amendment is there to undo those injuries and

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to create healing. It requires us to hold a mirror up to the developers and say: 'This is what you purchased in 2021, here is what it looked like in past decades; here's the displacement crisis that you are now responsible for undoing; these are the injuries; and now, here's a whole list of mitigation measures. You will be part of helping to undo those harms through planning and zoning.'

**James Jennings:** It's interesting that the zoning codes for the city of Boston were established in 1956. We have the Fair Housing Act of 1968. This basically represented two divergent narratives for the city of Boston up until a few weeks ago. When you look at the zoning codes in Boston, there isn't one word on fair housing, decades after the Fair Housing Act of 1968. In a sense, the amendment at last conjoins fair housing and zoning, as should have been clear all along.

**Kathy Brown:** In terms of backdrop, I would add that the Boston Tenant Coalition, in addition to helping to anchor the AFH community advisory committee, also anchors a coalition around inclusionary development policy, Coalition for a Truly Affordable Boston. We're trying to reform that in Boston and are working with Councilor Edwards on the state level and city level. The reality is as the Councilor said, the mayor's housing strategy has been build, build, build. It's approximately 57,000 units, that's what they say the need in the city of Boston is to address housing needs. Right now, it is maybe 15,000 units of those that are affordable? Part of the way of getting there is inclusionary development, but the reality is that the development that is happening is mostly market rate, and a lot of luxury units. While the payout has been improved, the actual percentage of units that are affordable is so paltry. And the income targeting by "Area Median Income" just doesn't work.

**David Harris:** I'm not as versed on zoning as others here, and I want to make sure that we get a different point in the record. It has to do with the Seaport and the work that Nadine and I did long ago, back when the Seaport was known as the South Boston Seaport. The reason it was known as the South Boston Seaport was

so that the community benefits could go to the South Boston Betterment Trust, set up for the benefit of "long time residents" of South Boston. We fought the racist idea that only one group could benefit from the creation of one of the first new neighborhoods in any city in the country. We had an opportunity to create a brand-new neighborhood, and there was a struggle over that and we were able to successfully stop it, but then we didn't have all the tools to stop it. It's really important to understand the role of community organizing and agitation, but you also have to have the statutes.

**Megan Haberle:** With regard to the AFFH amendment, could folks speak a bit to the role of the community in pushing

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the effort forward, and also to the interaction between advocacy groups and the council? How did that effort come into being and to fruition?

**Nadine Cohen:** I think the community part started with the Affirmatively Furthering Fair Housing mandate from the Obama administration. The mandate calls for looking broadly at all the things that go on in a municipality that keep people from having the opportunity to get housing, live in any community, and get the services they need - everything from healthcare to transportation, to education. It's so much broader than just housing. Through the efforts of the Boston Tenants Coalition, and this group of us that came together from legal services, and we had people from ACE, an environmental justice group in the community. We initially had the Lawyers' Committee for Civil Rights and a number of other community groups as well come together. We went out and had many community meetings. The city was involved as well and talked about what the major housing issues were. And I think it all came back to displacement, unaffordable housing, and lack of services. I think that informed a lot of our

decision-making.

The community became energized by Councilor Edwards's efforts to amend the zoning code and include fair housing. It was a great connection between political activists, community activists, lawyers, academics, environmental justice groups, and health advocacy groups. I think that was a very important part of this.

**Megan Haberle:** Could you highlight some of the specific fair housing requirements that the new zoning code requires developers to undertake?

**Lydia Edwards:** What I learned from, from the Seaport, and what I've learned from Suffolk Downs [an East Boston development project] is that the process is where the community needs to be involved in literally in telling you the questions that you need to ask. For example, when developers come in, they have to fill out a worksheet. They have to get a long worksheet and those questions were completely informed by the community. They initially gave us a draft that asked how many tenants are living in the building when you purchased it, but the community came back and said: not all of us are considered tenants, some of us are just occupants. We changed the vocabulary. Tell us who will live there? And did you require it to be delivered to you vacant? Did you get this building vacant on purpose?

The community came with the questions, to ask the developers: When you approached this project, what were your real intentions? And then we went into commercial displacement: did you just get rid of the only bodega in the entire neighborhood? Did you just get rid of Johnny Food's Mart (which they did in Charlestown, and replace it with a Whole Foods)?

Developers had never been trained in this kind of thinking or analysis. They never thought they were going to have to do this. And so now we're going to do their job for them, we're going to have to be the consultants and the judges of what they do. The community informed the questions in the process. Then it goes to a committee, and they take their list of their proposed mitigations, their proposed report from the historical and displacement mapping that they're going to get from the city.

And then they have a whole analysis  
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of whether they meet the mark, whether they're going to Affirmatively Further Fair Housing or not. That the committee is internal within city government was a fight and for many advocates it wasn't their preference. Still, the report comes out to the public. We know when the committee meets, we get to look at their reports and self-assessments, and we give our own opinion.

Part of our job going forward now is: how does this work? How do you demand more? What are you looking for? How do you use the analysis, what questions can push for the community to get more? From day one, it must involve trained community members. We have to go take these papers, take this process to community advocates, groups, and do what a lot of groups have learned to do with the Boston jobs policy. We have a job policy that says this many people of color, this many women, and this many Boston residents. They show up at the site. They do a census at the site and they show up at the committee meetings for the jobs policy and say, this isn't right, to those who are not in compliance.

That's what we need to do: train people to be part of this conversation. It's exciting in that sense and that's how it's expected to work. On its face not only does it include fair housing, but for the first time it uses affirmatively integrated communities as a goal in zoning.

We wholly adopted the Obama administration definition of AFFH on purpose because it has tried, true, tested case law to support it. And that's taking meaningful actions to remove all obstacles to opportunity. And making sure that we use that specific language, and that was a big push too, to negotiate that with the city.

**Megan Haberle:** As someone who also lives in a city that's a high-cost market, with a lot of displacement, but also a very deeply segregated city, I'm curious: as you talk about the building of political will to push this initiative forward, was the conversation around displacement and the conversation around other fair housing issues, including, segregation and housing choice, were those things intertwined from the beginning or was there daylight between them? How are those concepts working together for people, including for some of the advocacy groups

throughout this process?

**James Jennings:** That question reflects how to approach fair housing as it should rightfully be approached, which is as intersectional. We had groups who were involved with different areas of activism by presenting fair housing as not just looking at just affordable housing or building more housing, but really how is health connected to fair housing? There might be people who were concerned about health equity at the table. We have a big homelessness problem among children and families in the Boston public schools. I remember some early meetings where some people were asking me, what does health have to do with fair housing? But by approaching fair housing as it should be, intersectionally, it allowed for a space for groups working on all kinds of social justice issues to come together. So

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fair housing emerged as a powerful glue in the city.

**David Harris:** One answer is that in our surveys that stuff came up. We actually talked to people, got feedback. People mentioned violence. Violence becomes a fair housing issue if you understand it correctly. And you think about how you allocate resources and how the city takes care of itself.

It wasn't clear that the city understood or knew what fair housing was either, in its statutory nature or applied nature. The beauty of having this zoning legislation, was that as we worked with the city, as we tried to argue for the Juneteenth report, it was important for us to be able to point to some action that people could take that and this bill was it - it was perfect. The other piece of the struggle with the city and doing this was precisely around this question of community input.

The city, as all municipalities do, thinks about outreach. They think, we'll have a meeting at five o'clock, maybe we'll even go to the neighborhood and have a meet-

ing. That's their idea of outreach and engagement.

For us, there was this question of accountability, of getting the city to write into their AFH that they are going to be held accountable. That there are going to be mechanisms by which people will both have input and be involved in assessments.

I think that's where the real breakthroughs are coming. Not only here, they're coming all across the country where people are starting to say, we want to control our fate, and a little dinner for us or something at a meeting isn't going to do it.

**Lydia Edwards:** I wanted to add to the lessons learned from the Seaport, which is that it's not the first final product that gets approved where the injury is done. The Seaport on its first draft on paper is a green lush, beautiful place to live. By the time they got through amending it quietly, going through their process without community engagement, it's a concrete jungle with a postage stamp of greenspace.

We knew that we had to make sure that there were enough hooks. Now when they try to amend a development plan, they will have to do a robo-call to the community in English and Spanish. They will have to say we're going to amend it - we're going to do these things. We also required the developer to come back every two years and give the community updates on the mitigation process, buildings, and environmental impacts - all of these things are required.

We linked the AFFH amendment, not just in the zoning code, but to Article 80, which is our large and smart project review. When they go to amend their project, they have to do this assessment again. The impact of the amendment has to go through all of this as well. You changed your project. Now you have to make sure that the environmental standards that you agreed to are still going to be met as well, and the affirmatively integrated community that you promised us.

**Kathy Brown:** I feel like I've also learned more about the legal hooks and tools, as I'm more of the organizer. Housing discrimination is a huge problem in Boston. Suffolk University just did a study about housing discrimination, es-

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pecially people with subsidies. Blacks are discriminated against way more than everybody no matter their income. I just want to make sure that in addition to talking about displacement, we mention housing discrimination including against families and people with subsidies. So much of all the new housing has been like one-bedrooms and studios - not for families. I want to mention that is in the zoning amendment, in addition to displacement - the historical exclusion, and looking at areas that have historically been white.

I just want to talk a little bit about the amazing timing of all this. Two different components of it. One is racial justice: awakening, awareness, organizing, and accountability. The flashing of the lights on the city and public figures to act. The other thing which is exciting is all the grassroots organizing that has happened in many neighborhoods where a lot of young people, young people of color, all sorts of people are working with us to fight the kind of development that is impacting them. It is happening all around the city, Roxbury, Dorchester, Jamaica Plain, and Brighton - where an insane amount of development is happening. In terms of the timing of this amendment and using this amendment, we have all this amazing organizing and leaders of color on the ground fighting the BPDA around these developments. It's just really good because we didn't have that several years ago - it feels like the timing is perfect.

**Megan Haberle:** What is your sense of hopefulness going forward about how much impact you see this fair housing measure having on the city of Boston?

**James Jennings:** Well, I think there's going to be some resistance. I think the call to continue community organizing is going to be critical. About two weeks ago, the *Boston Business Journal* highlighted a piece entitled "As Walsh Heads to DC Boston's Real Estate Is Fearing Upheaval. We're going to get resistance from the powers that be, from the status quo. But we now have a framework to

push the envelope in terms of community organizing, asking the questions, and how to become more involved.

**Nadine Cohen:** As Councilor Edwards said this is just the beginning of the process, and we have to stay vigilant - you can't let up. We all know power never concedes anything. You push, you demand, and you organize for it. I think we have to be vigilant, keep that up, and have the community organizing part and also the legal as well. The city of Boston did not understand any of this when we first got together in 2017 to talk about AFFH, and I think we have educated them.

We have pushed them and Councilor Edwards has pushed them from the other side. So will things change? I hope so. I do want to say that I think the AFFH

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efforts from the Obama administration and the 2015 rule helped energize us to push forward. And I hope the Biden administration goes back to the 2015 rule and that other cities see the example of Councilor Edwards and really push for fair housing to become part of their zoning laws - because that's a big part of it.

**David Harris:** I'm an optimist, and you know where my optimism is right now - we're going to have a new mayor. One of the things that we learned in this process that was painful and difficult for us was that we never dealt directly with this mayor. This mayor never engaged this process fully or cooperatively. In other cities that's not the case. It would

be my hope that the next mayor is a little bit more engaged directly in these issues and a little more committed and knowledgeable about fair housing in its full dimensions.

**Lydia Edwards:** I'm hopeful in what I see for my colleagues now. One of the saddest things I learned in this is that unless you were an expert in housing and able to ask the right questions as a city council, [you didn't have the tools to assess developers]. I happen to have worked for the administration in housing, happened to have access to experts on the phone, and not everyone does, even the best person may not have this expertise on hand. Developers eventually come to my table and asked for my support, they always do. Now, I literally hold up the amendment and say, get as close to this as possible, and then go further. I don't care what size your project is, you're going to follow this amendment and that's it. So it has provided a guidebook for negotiating tactics for politicians.

Also, I'm hopeful that Cambridge and some other cities will start to pick it up, but it's not just going to be in Massachusetts. We set a national conversation, a mold, and every single city has its own special sauce of injury, pain, and discrimination. This amendment is flexible enough so that the healing can be city-specific.

We were going to change the zoning code for the city of Boston, no matter who won the national election. And so I hope that was also inspiring to a lot of other cities. It will come from the grassroots efforts of saying there's harm done, and there needs to be healing now. And this is how we're going to do it. ■

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