Restrictive local zoning and permitting decisions that decide who gets to live where have created and perpetuated segregation based on race, socioeconomic status, and familial status in Massachusetts. Per The Greater Boston Housing Report Card 2019, the majority of the area’s Latino and Black households live in just 10 municipalities across the state.

Too often, families with children, people with low incomes, and people of color are intentionally excluded when new housing is created by limiting housing type and affordability. By creating only studio apartments or only age-restricted homes in new development, for example, communities are furthering segregation and perpetuating exclusion.

This legislation will strengthen our fair housing laws and foster more inclusive communities by prohibiting municipal and state discriminatory zoning bylaws, ordinances, and land use decisions.

Questions? Contact CHAPA’s Director of Public Policy, Eric Shupin at eshupin@chapa.org or 617-682-9712

Image courtesy of Mapping Inequality
The Commonwealth of Massachusetts

PRESENTED BY:

Christine P. Barber

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act promoting fair housing by preventing discrimination against affordable housing.

PETITION OF:

<table>
<thead>
<tr>
<th>NAME</th>
<th>DISTRICT/ADDRESS</th>
<th>DATE ADDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Christine P. Barber</td>
<td>34th Middlesex</td>
<td>2/16/2021</td>
</tr>
<tr>
<td>Elizabeth A. Malia</td>
<td>11th Suffolk</td>
<td>2/24/2021</td>
</tr>
<tr>
<td>Peter Capano</td>
<td>11th Essex</td>
<td>2/25/2021</td>
</tr>
<tr>
<td>Lindsay N. Sabadosa</td>
<td>1st Hampshire</td>
<td>2/25/2021</td>
</tr>
<tr>
<td>David M. Rogers</td>
<td>24th Middlesex</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>James J. O'Day</td>
<td>14th Worcester</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Diana DiZoglio</td>
<td>First Essex</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Jack Patrick Lewis</td>
<td>7th Middlesex</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Jon Santiago</td>
<td>9th Suffolk</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>James B. Eldridge</td>
<td>Middlesex and Worcester</td>
<td>4/1/2021</td>
</tr>
<tr>
<td>Tram T. Nguyen</td>
<td>18th Essex</td>
<td>4/8/2021</td>
</tr>
<tr>
<td>Nika C. Elugardo</td>
<td>15th Suffolk</td>
<td>5/6/2021</td>
</tr>
<tr>
<td>Natalie M. Higgins</td>
<td>4th Worcester</td>
<td>5/11/2021</td>
</tr>
</tbody>
</table>
An Act promoting fair housing by preventing discrimination against affordable housing.

    Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

    Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

        20. For a local or state administrative, legislative or regulatory body or instrumentality to engage in a discriminatory land use practice. For the purposes of this paragraph, a “discriminatory land use practice” shall mean: (i) enacting or enforcing any land use regulation, policy or ordinance; (ii) making a permitting or funding decision with respect to housing or proposed housing; or (iii) taking any other action the purpose or effect of which would limit or exclude: (a) housing accommodations for families or individuals with incomes at or below 80 per cent of the area median income as defined by the United States Department of Housing and Urban Development; (b) housing accommodations with sufficient bedrooms for families with children including those with more than two bedrooms; or (c) families or individuals based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age,
genetic information, ancestry, marital status, veteran status or membership in the armed forces,
familial status, disability condition, blindness, hearing impairment or because a person possesses
a trained dog guide as a consequence of blindness, hearing impairment or other handicap.

It shall not be a violation of this chapter if a local or state government entity whose action
or inaction has an unintended discriminatory effect proves that the action or inaction was
motivated and justified by a substantial, legitimate, nondiscriminatory, bona fide governmental
interest and that the government entity is unable to prove that those interests cannot be served by
any other policy or practice that has a less discriminatory effect; or (ii) demonstrates that it has
consistently supported housing described in (iii) above and that the entity’s action or inaction
was motivated and justified by a substantial, legitimate nondiscriminatory bona fide
governmental interest

Any person or class of persons claiming to be aggrieved by a violation of this Section
may institute and prosecute a civil action in the District, Superior, Housing, Probate or Land
Court Department for injunctive and other appropriate equitable relief including an award of
actual damages, including, where the violation includes intentional discrimination, an award of
punitive damages. This civil action must be filed not later than three years after a violation of this
section. Any aggrieved person who prevails in an action authorized by this Section shall be
entitled to an award of the costs of the litigation including expert witness fees, reasonable
attorneys' fees in an amount to be fixed by the court, and prejudgment and post judgment
interest. The attorney general may, in like manner, also commence a civil action to seek relief for
a violation of this Section. Nothing in this Section is intended to require a person seeking to
enforce the protections afforded herein to exhaust any administrative remedies applicable to
discrimination claims under this Section or other laws, or to prevent or limit a person from filing
a complaint at the Massachusetts Commission Against Discrimination.
Affirmatively furthering fair housing means taking a proactive approach to creating diverse, inclusive communities with access to good jobs, schools, health care, transportation, and housing. By ensuring access and opportunity through more equitable planning from the very start, cities and towns can reshape the policies that have created and perpetuated segregation for decades. We can create protections for the future and begin to right the wrongs of the past, rooting out both intentional and unintentional discrimination in our housing policies and land use decisions.

**Why is ensuring fair housing critical?**

This legislation creates a state-level duty to affirmatively further fair housing to make sure that the state, cities, towns, local housing authorities, and other public entities do not discriminate in their programs. It also creates a commission to establish how communities can meet this duty. This bill would make fair housing duties and recommendations explicit for every city and town while thoughtfully engaging the community in the planning process.

**Questions?** Contact CHAPA’s Director of Public Policy, Eric Shupin at eshupin@chapa.org or 617-682-9712

*Image courtesy of Mapping Inequality*
The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers and Jon Santiago

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to affirmatively further fair housing.

PETITION OF:

<table>
<thead>
<tr>
<th>NAME:</th>
<th>DISTRICT/ADDRESS:</th>
<th>DATE ADDED:</th>
</tr>
</thead>
<tbody>
<tr>
<td>David M. Rogers</td>
<td>24th Middlesex</td>
<td>2/19/2021</td>
</tr>
<tr>
<td>Jon Santiago</td>
<td>9th Suffolk</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Lindsay N. Sabadosa</td>
<td>1st Hampshire</td>
<td>2/25/2021</td>
</tr>
<tr>
<td>Peter Capano</td>
<td>11th Essex</td>
<td>2/25/2021</td>
</tr>
<tr>
<td>Tommy Vitolo</td>
<td>15th Norfolk</td>
<td>2/25/2021</td>
</tr>
<tr>
<td>Steven C. Owens</td>
<td>29th Middlesex</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Jack Patrick Lewis</td>
<td>7th Middlesex</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Nika C. Elugardo</td>
<td>15th Suffolk</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Vanna Howard</td>
<td>17th Middlesex</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Elizabeth A. Malia</td>
<td>11th Suffolk</td>
<td>3/15/2021</td>
</tr>
<tr>
<td>James B. Eldridge</td>
<td>Middlesex and Worcester</td>
<td>3/26/2021</td>
</tr>
</tbody>
</table>
An Act to affirmatively further fair housing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 23B of the General Laws, as so appearing, is hereby amended by adding the following section:-

Section 31. As used in sections 31 to 32, inclusive, the following words shall have the following meanings:

“Affirmatively further fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, to affirmatively further fair housing means to take meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living
patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

“Meaningful actions” means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.

“Public entity” means (i) any department or office of a state or municipal government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder; and (ii) any other political subdivision of the state that is a grantee or sub-grantee receiving funds provided by the United States Department of Housing and Urban Development under the Community Development Block Grant program, the Emergency Solutions Grants program, the HOME Investment Partnerships program, or the Housing Opportunities for Persons With AIDS program or the successors to these programs.

“Protected characteristics” means any characteristic enumerated in chapter 151B of the Massachusetts General Laws.

SECTION 2. Chapter 23B of the General Laws, as so appearing, is hereby amended by adding the following section:-

Section 32. (a) A public entity affecting housing and community development shall administer its programs and activities in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

(b) There shall be a commission to determine how a public entity shall fulfill its obligation to affirmatively further fair housing as created by this section. The commission shall
establish different categories of public entities based on criteria identified by the commission. The categories shall include, but not be limited to exclusionary municipal governments, local governments where there is a high risk of displacement, and local housing authorities. The commission shall establish lists of meaningful actions that a public entity may take to fulfill the obligation to affirmatively further fair housing created by this section, with such lists being specific to the types of public entities and specific protected characteristics. The commission shall establish the minimum number of actions a public entity must take in order to fulfill its obligation to affirmatively further fair housing as created by this section.

The commission shall be chaired by the secretary of housing and economic development, or a designee. The commission shall consist of, but not be limited to, the following members or their designees: the house and senate chairs of the joint committee on housing; one member of the house of representatives who shall be appointed by the minority leader and one member of the senate who shall be appointed by the minority leader; the undersecretary of housing and community development; the Massachusetts Attorney General; a member from each of the Massachusetts regional planning agencies; the executive director of the Massachusetts Housing Partnership; one member from Citizens’ Housing and Planning Association; one member from the Massachusetts Municipal Association; one member from the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials; one member from the Massachusetts Union of Public Housing Tenants; at least six members representing those with protected characteristics; and at least two experienced civil rights practitioners.

The commission shall submit its report and findings to the joint committee on housing and the clerks of the house of representatives and senate no later than one year following the passage of this act.
(c) Compliance by a public entity with its obligation to affirmatively further fair housing as created by this section shall be evaluated every three years.

(d) Any person, as defined by Chapter 151B, may institute and prosecute a civil action for injunctive and other appropriate equitable relief for a public entity’s failure to affirmatively further fair housing as described in this section and regulations promulgated by the department of housing and community development. A prevailing plaintiff shall be entitled to an award of the costs of the litigation and reasonable attorneys’ fees in an amount fixed by the court or by agreement of the parties.

(e) The compliance of a public entity with the duty to affirmatively further fair housing as created in this section shall not relieve a public entity from any obligation to affirmatively further fair housing under federal law.

(f) The compliance of a public entity with any obligation to affirmatively further fair housing created under federal law shall not relieve a public entity from the obligation to affirmatively further fair housing as created in this section. The provisions of this section shall be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal laws, including those laws with provisions comparably worded to the provisions of this section, have been so construed.

(g) The department of housing and community development shall promulgate guidelines to implement this section and to incorporate the report and findings of the commission created by this section.
Despite not being overtly discriminatory, housing policies can have unintended consequences that are very difficult to prove in court. When only white families are getting approved for mortgages based on seemingly objective lending standards, or insurance rates are higher for certain groups based on “risk factors,” for example, inequities and segregation persist in our communities. By rooting out the intended impacts of policies of the past and preventing unintentionally discriminatory policies for the future, we can ensure housing for all really means housing for all.

**WHAT WILL THIS BILL DO?**

This legislation strengthens protections against discrimination for renters, creating a state fair housing disparate impact standard. This will allow people to challenge a housing policy or program that has a discriminatory impact on them because of their race, sex, gender identity, disability, family status, or other protected class — even if the policy or program appears on its face to apply to everyone equally. This will protect against policies and practices that, intentionally or unintentionally, keep people from homes they can afford simply because of who they are.

**Questions?** Contact CHAPA’s Director of Public Policy, Eric Shupin at 617-682-9712

---

**CONTACT YOUR STATE LEGISLATORS & ASK THEM TO SUPPORT THESE BILLS:**
https://malegislature.gov/search/findmylegislator

---

**Image courtesy of Mapping Inequality**
The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a fair housing disparate impact standard.

PETITION OF:

<table>
<thead>
<tr>
<th>NAME</th>
<th>DISTRICT/ADDRESS</th>
<th>DATE ADDED</th>
</tr>
</thead>
<tbody>
<tr>
<td>David M. Rogers</td>
<td>24th Middlesex</td>
<td>2/19/2021</td>
</tr>
<tr>
<td>Lindsay N. Sabadosa</td>
<td>1st Hampshire</td>
<td>2/25/2021</td>
</tr>
<tr>
<td>Peter Capano</td>
<td>11th Essex</td>
<td>2/25/2021</td>
</tr>
<tr>
<td>Jack Patrick Lewis</td>
<td>7th Middlesex</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Nika C. Elugardo</td>
<td>15th Suffolk</td>
<td>2/26/2021</td>
</tr>
<tr>
<td>Christine P. Barber</td>
<td>34th Middlesex</td>
<td>3/16/2021</td>
</tr>
<tr>
<td>James B. Eldridge</td>
<td>Middlesex and Worcester</td>
<td>3/26/2021</td>
</tr>
</tbody>
</table>
An Act establishing a fair housing disparate impact standard.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 151B of the General Laws, as so appearing, is hereby amended by adding the following:-

24. The term “discriminatory effect” means a decision, program, policy or practice that actually or predictably results in a disparate impact on a group of persons because of their membership in a protected class or a decision, program, policy or practice that creates, increases, reinforces, or perpetuates segregated housing patterns.

25. The term “disparate impact” means when a decision, program, policy or practice disproportionately disadvantages members of a protected class, without regard for the intention behind or purpose of the decision, program, policy or practice.

26. The term “legally sufficient justification” means that a justification for a challenged decision, program, policy or practice: (a) is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant; (b) effectively carries out
the identified interest, (c) is sufficiently compelling to override the discriminatory effect; (d)
there is no feasible alternative policy or practice that would equally or better accomplish the
identified interest with a less discriminatory effect; and (e) is supported by evidence and may not
be hypothetical or speculative. The burdens of proof for establishing each of the elements of a
legally sufficient justification are set forth Section 4 of this chapter.

SECTION 2. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby
amended by adding the following:-

20. For any person to adopt any housing, community development, lending or insurance
decision, program, policy or practice that has a discriminatory effect on members of protected
groups or that creates, increases, reinforces, or perpetuates segregated housing patterns
independently of the extent to which it produces a disparate impact on protected groups.

In discriminatory effects cases the complainant has the burden of proving by a
preponderance of evidence that a challenged housing, community development, lending or
insurance decision, program, policy or practice caused or predictably will cause a disparate
impact. The complainant need not prove that the challenged decision, program, policy or practice
is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective such as a
practical business, profit, policy consideration, or requirement of law or third party.

Once the complainant satisfies the burden of proof, the respondent has the burden of
proving that the challenged decision, program, policy or practice meets all of the elements of a
legally sufficient justification as defined in Section 1 and that no other policy or practice that has
a less discriminatory effect could serve the substantial, legitimate, nondiscriminatory interest
identified. A demonstration by the respondent that a practice was reasonably necessary to
comply with a third party’s requirement of law, or to support an interest in business or profit may not be used as a justification or defense against a claim of discrimination.

A challenged decision, program, policy or practice must be a contributing cause of the disparate impact complained of but not necessarily the direct, proximate or robust cause. A challenged policy or practice may have a discriminatory effect even if there are intervening causes that contribute to the result.

A single person may pursue a claim based on a decision, program, policy or practice that has a disparate impact on a group of individuals if that person has or predictably will be injured by the decision, program, policy or practice.

Nothing in this subsection is intended to require a person seeking to enforce the protections afforded herein to exhaust any administrative remedies applicable to discrimination claims under this Section or other laws, or to prevent or limit a person from filing a complaint at the Massachusetts Commission Against Discrimination.