

MEDFORD HOUSING AUTHORITY REASONABLE ACCOMMODATION POLICY

INTRODUCTION

This Reasonable Accommodation Policy sets forth the policy of the Medford Housing Authority (“MHA”) in connection with making reasonable accommodations for applicants, residents and participants with disabilities to enable them to fully participate in MHA’s public housing and voucher programs and activities.

SECTION 1. POLICY STATEMENT.

MHA is committed to ensuring that its policies and practices do not deny individuals with disabilities the opportunity to participate in, or benefit from, nor otherwise discriminate against individuals with disabilities in connection with the operation of MHA’s housing services or programs, solely on the basis of such disabilities. Therefore, if an individual with a disability requires a reasonable accommodation (such as an accessible feature or modification to MHA policy), MHA will provide such accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial or administrative burden. In such a case, MHA will offer another accommodation that would not result in an undue financial or administrative burden.

SECTION 2. AUTHORITY.

The requirements of this Policy are based upon the following statutes and regulations:

2.1. Title VIII of the Civil Rights Act of 1968, as amended in 1988 (The Fair Housing Act, 42 U.S.C. §§3601-3619): The Fair Housing Act prohibits all forms of discrimination in the sale or rental of most dwellings because of the disability of the renter or buyer, or any person residing in the dwelling, or associated with the renter or buyer. It explicitly makes it unlawful for any person to refuse to make reasonable accommodation in rules, policies, practices and services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas. The Act’s general non-discrimination provisions also cover race, color, religion, sex, national origin, and families with children under 18.

2.2. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794): Section 504 makes it unlawful to exclude otherwise qualified individuals with disabilities from participating in, to deny them the benefits of, or to subject them to discrimination under any program, service or activity receiving federal financial assistance, solely because of their disability. Section 504 case law and implementing regulations make it clear that a public housing authority is required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the housing unit, the common areas and participate in or

access programs and activities conducted or sponsored by the MHA and/or recipient in the most integrated manner possible.

2.3. Americans with Disabilities Act of 1990, Title II (42 U.S.C. § 12101 et seq.), (ADA): The ADA (Title II) extends the protections of Section 504 to all activities of state and local governments and their instrumentalities, including public housing authorities, regardless of the receipt of federal funding. The ADA protects individuals with disabilities from discrimination, requires that programs and activities are readily accessible to and equally usable by individuals with disabilities, and provides for reasonable modifications.

2.4. The **federal regulations** implementing each of these statutes are set forth in the Code of Federal Regulations as follows:

Title VIII – 24 C.F.R. Part 100 et seq.
Section 504 – 24 C.F.R. Part 8
ADA, Title II – 28 C.F.R. Part 35
ADA, Title III – 28 C.F.R. Part 36

2.5. Massachusetts General Laws, Chapter 151B (The Massachusetts Housing Bill of Rights for People with Disabilities): This Act makes it unlawful for an owner, lessor, or managing agent of housing accommodations to refuse to rent, lease, or to discriminate in the provision of housing to any person or group of persons because of their race, religious creed, color, national origin, sex, sexual orientation, ancestry, age, marital or familial status, receipt of public assistance or disability. The Act specifically provides that refusal to make reasonable accommodations where necessary and (for publicly assisted housing) reasonable modifications constitutes discrimination based on disability.

2.6. The Massachusetts Equal Rights Law, (M.G.L. Chapter 93, § 103): This law states that any person in Massachusetts, regardless of disability or age, shall with reasonable accommodation, have the same rights as other persons to make and enforce contracts, purchase, lease, sell, hold, and convey property.

2.7. Amendment Article 114 of the Massachusetts Constitution: This Amendment states that no otherwise qualified individual with a disability shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of or be subject to discrimination under any program or activity within Massachusetts.

SECTION 3. DISABILITY.

3.1. A Person With A Disability Is One Who:

1. Has a physical or mental impairment that substantially or materially limits one or more major life activity; or
2. Has a record of such impairment; or

3. Is regarded as having such impairment.

3.2. Excluded from the definition of a disability are:

1. Sexual behavior disorders such as transvestitism, pedophilia, exhibitionism and voyeurism; and
2. Compulsive gamblers, kleptomaniacs or pyromaniacs.

3.3. Illegal Drug Use.

Under 24 CFR § 100.201 (a)(2), a disability does not include the *current* illegal use of or addiction to a controlled substance. Where there is evidence of illegal drug use with the last known use more than twelve months previous, then the use will be presumed to be non-current. Where there is evidence of illegal drug use within the last twelve months, the resident/applicant/ participant may provide evidence of recovery to establish that his/her use is not current.

3.4. Mental and Physical Impairments

A mental impairment may include, but is not limited to, mental retardation, organic brain syndrome, emotional or mental illness (such as major depressive disorder) and specific learning disabilities. A physical impairment may include impairment of the following body systems: neurological; musculoskeletal; senses; respiratory; cardiovascular; reproductive, digestive, genitourinary, hemic and lymphatic; skin; and endocrine. A mental or physical impairment may include but is not limited to cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, and diabetes.

The phrase “physical or mental impairment” includes, but is not limited to, contagious and non-contagious diseases and conditions, such as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, heart disease, diabetes, mental retardation, mental illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, a history of drug addiction, and alcoholism. The phrase “physical or mental impairment” includes those impairments which are episodic and/or in remission provided that they would substantially limit a major life activity when active.

The following conditions are not impairments: normal pregnancy; normal deviations in height, weight, or strength; current illegal use of a controlled substance; psychoactive substance use disorders resulting from current illegal use of drugs; compulsive gambling, kleptomania, or pyromania; and pedophilia, exhibitionism, and voyeurism.

3.5. Major Life Activity

Major Life Activity includes but is not limited to caring for one's self, doing manual tasks, walking, seeing, sleeping, hearing, speaking, breathing, learning, eating, standing, lifting, bending, reading, concentrating, thinking, communicating, and working. A Major Life Activity also includes the operation of a major bodily function such as immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to ameliorative measures such as hearing aids or anti-psychotic medications.

3.6. A Qualified Person With A Disability

A qualified person with a disability is one who meets the essential eligibility requirements and who can achieve the purpose of the program or activity with or without reasonable accommodation.

3.7. Essential Eligibility Requirements

Essential eligibility requirements include but are not limited to: stated eligibility requirements like income; timely payment of financial obligations; care of premises; no disqualifying criminal or drug activities; respect for the rights of others and requirements inherent to the program or activity. Compliance with all essential obligations of occupancy can be met with or without supportive services. A person may request a reasonable accommodation to meet the essential eligibility requirements.

3.8. Exclusions

A person with a disability may be excluded from a housing program when the person is not "otherwise qualified" for housing or when a person's tenancy with a reasonable accommodation would pose a direct threat to others' health or safety or would result in substantial physical damage to the property of other residents or the landlord. Before the MHA may conclude that a person with disabilities poses such a direct threat or will cause such damage that cannot be mitigated by reasonable accommodation, the MHA must make an individualized assessment, based on reasonable judgment, that relies on current medical knowledge or on the best available objective evidence to ascertain a) the nature, duration, and severity of the risk; b) the probability that the potential injury will actually occur; and c) whether reasonable modifications of policies, practices or procedures will mitigate the risk.

SECTION 4. REASONABLE ACCOMMODATION

4.1. Introduction

It is presumed that the individual with a disability is usually knowledgeable of the appropriate types of, and methods for, providing reasonable accommodations needed when making a request.

The procedure for evaluation and responding to requests for a reasonable accommodation relies on a cooperative relationship between MHA and the applicant/resident/participant. The process is **not** adversarial.

In granting reasonable accommodations, the MHA shall offer programs and activities in the most integrated setting appropriate.

A person need not request an accommodation (including modifications) where architectural accessibility is otherwise required by law.

4.2 Need for an Accommodation

A reasonable accommodation may include a transfer, an alteration to the home or housing complex or an exception to MHA's rules, policies or procedures. MHA may accept the judgment of the person with the disability that an accommodation is needed or MHA may require the person to show the need for an accommodation.

The accommodation must be requested unless the need for such accommodation is readily apparent or otherwise known to the MHA. Any request may be made orally or in writing; may be made at any time and may be made by an applicant, participant, tenant or household member and/or anyone acting on their behalf. The MHA shall make available to the requestor a reasonable accommodation form but the request does not have to be in any particular form nor do the words "reasonable accommodation" need to be used. Upon request, the MHA shall provide assistance to the person in completing the form.

Additionally, if the MHA has information and/or it is apparent that a person is disabled and appears to need an accommodation in order to use and enjoy a MHA dwelling or program, then the MHA shall offer to engage in a dialogue about any needed accommodation.

4.3. Nexus Between the Disability and Accommodation.

For a tenant, participant or applicant to receive a reasonable accommodation, there must be a connection between the disability and the requested accommodation.

If MHA requires more information to understand the connection between the disability and the requested accommodation, MHA shall request further supporting documentation

to establish how the requested accommodation will effectively help that person meet essential applicant or tenancy obligations.

4.4. Accommodation Must be Reasonable

If a requested accommodation is reasonable, then MHA will grant it. A request for an accommodation shall be considered to be "reasonable" as long as it does not create an undue financial hardship and administrative burden or constitute a fundamental alteration in a housing program or activity.

- a. The determination of whether an accommodation constitutes an undue financial and administrative burden shall be made on a case by case basis, taking into account the circumstances and resources available at the time of the decision.
- b. If granting the requested accommodation would create an undue financial and administrative burden, the MHA shall comply with the request to the extent it can do so without undergoing undue burden(s) as described above.
- c. If granting the requested accommodation would constitute a fundamental alteration in the housing program, the MHA may deny the request.
- d. Each request for an accommodation should be considered as an individual request and should be granted if the particular accommodation requested meets the criteria outlined above. The fact that granting an accommodation for one person could set a precedent, and that granting requests by a substantial number of other persons for the same accommodation could have a significant impact on the program shall not constitute a sufficient basis for a finding that a particular accommodation constitutes a fundamental alteration.

4.5. Examples of reasonable accommodations might include, where appropriate:

1. Retroactive rent decrease where the delay in reporting or verification was the result of a disability;
2. Permitting a Section 8 housing choice voucher holder to have a voucher with additional bedrooms or at a higher payment standard where needed for disability-related reasons;
3. Holding off on eviction proceedings for poor housekeeping where a MHA tenant with disabilities is seeking or receiving services to assist with housekeeping tasks;
4. Holding off on eviction proceedings for an interference with a neighbor's quiet enjoyment where a person is in the process of obtaining enhanced medical services which may alleviate the interference

5. Adding grab bars, relocating controls, providing more accessible or adjustable fixtures in the bathroom or kitchen where necessary to enable a person to safely use those rooms and providing wider doors and re-hanging doors to swing outward instead of into the accessible space.
6. Allowing additional time to provide recertification information where, due to a disability, a Section 8 or public housing tenant fails to timely provide such information
7. Permitting a Section 8 tenant with disabilities to rent from a relative
8. Providing an assigned parking space near the entrance to the tenant's public housing apartment
9. Making a reader or sign language interpreter available during an interview
10. Installing flashing light smoke detectors in units and common areas.

SECTION 5. AMENDMENT.

This Policy may be amended only by resolution of the Board of Commissioners.

SECTION 6. EMPLOYEE TRAINING

6.1. All current MHA employees shall be advised of the MHA's Reasonable Accommodation Policy and their responsibilities hereunder.

6.2. At the commencement of their employment with MHA, new employees shall be similarly advised of the MHA's Reasonable Accommodation Policy and their responsibilities hereunder.

PROCEDURE #1 - COMMUNICATION WITH APPLICANTS, RESIDENTS AND PARTICIPANTS

1.1. At the time of application, all applicants must be provided with the Request for Reasonable Accommodation Form or, upon the applicant's request, the Request Form must be provided in an equally effective format.

1.2. MHA Residents seeking accommodations may contact the MHA at 121 Riverside Avenue, Medford Housing Authority, 781.396.7200.

1.3. MHA Section 8 participants seeking accommodations may contact the MHA Rental Assistance Department or the MHA Administrative Office at 121 Riverside Avenue, Medford, 781.396.7200.

1.4. Applicants seeking accommodations may contact the MHA Administrative Office at 121 Riverside Avenue, Medford, 781.396.7200.

1.5. Where the MHA staff receives routine requests for reasonable accommodation (such as re-scheduling an appointment or inspection), he or she may approve such request.

1.6. All other requests for reasonable accommodation received by MHA staff shall be promptly forwarded to the Executive Director or his/her designee. In addition, any requests for reasonable accommodation may be submitted directly to the Executive Director. The Executive Director or his/her designee shall review the request to determine whether additional information is necessary, whether it is necessary to meet with the individual making the request, and whether to grant or deny the request, within the time limits set forth below.

1.7. Upon receiving the request, the MHA will respond to the request as soon as possible and no later than fourteen (14) days. The MHA shall provide due consideration to the time-sensitive nature of any request. If MHA requires additional information or documentation, it shall provide a written request to the resident by using the Request For Information or Verification Form.

1.8. MHA will approve or deny the request as soon as possible but no later than thirty (30) days after receiving all needed information and documentation from the applicant or resident. All decisions to grant or deny reasonable accommodations will be communicated in writing or if required, in an alternative format in order to communicate the decision to the applicant/resident. Exceptions to the thirty (30) day period for notification of MHA's decision on the request should be provided to the resident in writing setting forth the reasons for the delay.

1.9. The MHA shall have an interactive dialog with any person requesting an accommodation prior to any denial of his/her request.

1.10. Verification and Confidentiality. The MHA has a right to request that the resident or applicant provide medical information if the information submitted does not clearly explain the nature of the disability or the need for the reasonable accommodation or does not otherwise clarify how the requested accommodation will assist the individual. Such a request for documentation must be specific so that the individual will know what to provide. The MHA shall not request an applicant/resident or his/her medical provider to provide the individual's entire medical records but shall only seek that information necessary to evaluate a request for reasonable accommodation. The MHA does not have the right to obtain medical information as to diagnosis, medical history or medical treatment unless directly relevant to the request for reasonable accommodation. All information gathered in this process must be kept confidential and the Executive Director or his/her designee, as applicable, shall not share this with other MHA staff unless such staff person is involved in making or implementing the decision on the request for reasonable accommodation.

1.11. The MHA will use appropriate auxiliary aids and accessible formats where necessary to provide for effective communication with persons with disabilities, including those with hearing, speech, vision, and cognitive impairments.

1.12. The MHA shall (in writing) inform any resident whose reasonable accommodation request has been denied in full or in part, of his or her right to file a fair housing complaint, whether or not the MHA grievance procedure is pursued, with the following administrative agencies or in court:

Department of Housing and Urban Development (HUD)
10 Causeway Street
Boston, MA 02222
Telephone: (617) 994-8200
TTY # (617) 565-5453

Massachusetts Commission Against Discrimination (MCAD)
One Ashburton Place
Room 601 (6th Floor)
Boston, MA 02108
Telephone: (617) 994-6000
TTY # (617) 994-6196

1.13. The MHA will maintain at its Administrative Offices written materials which summarize this Policy and highlight the procedures for making a request for reasonable accommodations.

1.14. The MHA will publicly post and make available at the Administration Offices, the Notice to Individuals with Disabilities regarding Reasonable Accommodations and Reasonable Accommodation Request forms. This Notice and the Request Form will also be included in the public housing Resident Handbook, Section 8 briefing packet and in other orientation materials for MHA residents.

1.15 MHA shall make this Reasonable Accommodations Policy document available in full, and in accessible formats when requested, to any person who requests it.

1.16. While a person's request for a reasonable accommodation is pending, the MHA shall take no adverse action against such person that relates to the pending request.

PROCEDURE #2 - SEQUENCE FOR MAKING DECISIONS

The MHA shall answer the following inquiries to determine if a request for an accommodation is reasonable:

2.1. Is the applicant/resident a qualified "individual with a disability"?

(a) If **NO**, MHA is not obligated to make a reasonable accommodation; therefore, MHA may deny the request.

(b) If **YES**, go to Step 2.2.

(c) If more information is needed, MHA shall either write for more information using the standard Request for Information letter, or request a meeting using the standard Request for Meeting letter.

2.2. Is the requested accommodation related to the disability?

(a) If **NO**, MHA is not obligated to make the accommodation; therefore, MHA may deny the request.

(b) If **YES**, go to Step 2.3.

(c) If more information is needed, MHA shall either write for more information using the Request for Information Letter, or request a meeting using the Request for Meeting Letter.

2.3. Is the requested accommodation reasonable?

(a) If **YES**, MHA shall approve the request for reasonable accommodation and implement it. MHA shall promptly prepare and send the Letter Approving Request for Reasonable Accommodations.

(b) If **NO**, MHA may deny the request, but the MHA shall first offer (see Section 1.9 above) to engage in an interactive dialogue with the person requesting the accommodation to determine whether any other accommodation is reasonable. The MHA shall then prepare and send the Letter Denying Request for Reasonable Accommodations.

(c) If more information is needed, MHA shall either write for more information using the Letter Approving Request for Reasonable Accommodations, or request a meeting using the Request for Meeting Letter.