

CITY OF SOMERVILLE, MASSACHUSETTS
FAIR HOUSING COMMISSION
Katjana Ballantyne
Mayor

Staff

Andres Bueno,
Acting Fair Housing Commission staff liaison

Commissioners

Claudia DeAndrade
Patrice Faulkner
Dennis Fischman
Rona Fischman
Janine Lotti

December 20, 2022

Somerville Mayor Katjana Ballantyne
and Somerville City Council Members
Somerville City Hall, 93 Highland Ave.
Somerville, MA 02143
Sent via email to: kballantyne@somervillema.gov
and citycouncil@somervillema.gov

Dear Mayor Ballantyne and City Council Members:

I am writing on behalf of Somerville's Fair Housing Commission (FHC) to call attention to an issue relevant to the FHC annual report for Fiscal Year 2021 being transmitted under separate cover shortly.

That issue concerns the significant backlog of fair housing complaints filed and pending with the Massachusetts Commission Against Discrimination (MCAD), as reported in The Boston Globe and local National Public Radio news station WBUR among other media outlets this year¹. As detailed in a WBUR article linked and attached to this correspondence: **MCAD may take years to respond to discrimination complaints resulting from severe funding constraints extending over multiple years.**²

WBUR's investigation reported that as of last summer, a growing backlog of filed fair housing complaints at MCAD meant it could take upward of 18 months to investigate and resolve a given case. The number of pending cases had grown from 285 in 2019 to 1,432 as of April 2022. It does not appear that the backlog is attributable to an increase of actual complaints; between 2019 and 2021 there was a decrease in the number of filed complaints, from 3,361 filed in 2019 to 2,463 in 2021.

Under Somerville's Fair Housing Ordinance, the FHC may investigate complaints reported to it, but does not itself have enforcement powers; it is instead only authorized to refer complaints to enforcement agencies including MCAD or the federal Department of Housing and Urban Development (HUD)³, whose local Fair Housing office generally refers complaints to MCAD. If a complaint involves a federal protected class, MCAD may refer the case to HUD through a dual filing process. (There are seven federal protected classes whereas Massachusetts has 15 protected classes, including source-of-income.) MCAD is the only recourse available for households that are not part of a federal protected class.

¹ <https://www.bostonglobe.com/2022/05/30/metro/ballooning-case-backlog-states-anti-discrimination-agency-forces-people-wait-years-justice/>

² <https://www.wbur.org/news/2022/05/30/delays-mcad-discrimination-cases-complaints>

³City of Somerville Fair Housing ordinance § Sec7-47 (b)(2)

While funds to significantly increase low MCAD staffing levels cited as the main source of the case backlog were included in the state budget passed since reports of the situation surfaced, the extremely high level of pending cases are expected to last for some time. At the same time that there is a historically high number of Fair Housing complaints pending resolution at MCAD, the number of such complaints in Somerville has been increasing. Staff beginning work on FHC's Fiscal Year 2022 Annual Report this summer reported that between FY21 (July 1, 2020 to June 30, 2021) and FY22 (July 1, 2021 to June 30, 2022), the number of complaints filed and originating in Somerville increased from nine (9) in FY 2021 to 19 in FY 2022.

In light of these two troubling trends – the growing MCAD case backlog in recent years and signs of an increase in reported cases locally – FHC members wish to call particular attention to them in anticipation of transmitting the annual report called for under the existing ordinance. Prior to the Fair Housing and Inclusionary Program specialist's position becoming vacant late last summer, staff and Commissioners began exploring one potential approach to help address fair housing complaints in Somerville. (Preparation of the FY22 report will start upon completion of a hiring search underway for a Fair Housing and Inclusionary Program Specialist; the position was vacated last summer at the end of August 2022.)

That approach would involve the FHC becoming what is known as a “substantially equivalent enforcement agency” that would have authority to enforce Fair Housing law in Somerville. Preliminary research by staff identified this as an approach adopted in Boston among other municipalities. From initial Housing Division staff review of Title 24 Part 115 of the Code of Federal Regulations⁴, it appears that two main steps would be involved with becoming certified as such a substantially equivalent agency.

One task would involve preparation of an application to HUD that would, among other things, provide for FHC members and staff to be trained in the investigation and enforcement of fair housing law and related issues. The second step our initial research identified is to confirm and define what changes may be necessary to Somerville's existing Fair Housing ordinance in order for the FHC to be able to levy fines and potentially other measures in the interest of enforcement of fair housing laws.

As the Fair Housing Commission looks toward its continued work in 2023, we wish to call these issues to the Mayor's and City Council's attention. We would be eager to share further information on this option, as well as any other measures that may exist to support the City's ability to effectively address and resolve fair housing complaints at the local level where they are most often experienced. Thank you in advance for the opportunity to raise our concerns as we work to advance efforts to affirmatively further fair housing in Somerville.

Please feel free to direct questions and/or thoughts on this correspondence to me on the FHC's behalf at dennis@twofisch.com.

Sincerely,

/S/

Dennis Fischman
Member, Somerville Fair Housing Commission

⁴<https://www.govinfo.gov/content/pkg/CFR-2017-title24-vol1/xml/CFR-2017-title24-vol1-part115.xml#seqnum115.200>

CC: FHC members – Claudia DeAndrade, Patrice Faulkner, Rona Fischman, Janine Lotti
OSPCD Executive Director Tom Galligani
Housing Director Mike Feloney
Assistant Housing Director/Housing Counsel Kelly Donato
Acting Fair Housing Commission staff liaison Andres Bueno

Attachment: WBUR article, May 30th 2022