

APPENDIX B.

Public Comments

PUBLIC COMMENTS RECEIVED

<u>DATE</u>	<u>FROM</u>
January 2, 2015	Stuart Hersh
January 9, 2015	Elizabeth Mueller & Karen Paup
January 9, 2015	Heather Way
January 10, 2015	Jamil Alam
January 12, 2015	Austin Apartment Association
February 9, 2015	Karen Paup & Heather Way
February 9, 2015	Texas Appleseed

From: Stuart Hersh [<mailto:shersh@maryleefoundation.org>]

Sent: Friday, January 02, 2015 9:05 AM

To: NHCD

Cc: shersh@austin.rr.com; Giello, Rebecca; Copic, Regina; ccrump@austin.rr.com; dlilljedahl@maryleefoundation.org

Subject: Impediments to Fair Housing Draft Plan

Here are my comments on the Impediments to Fair Housing Draft Plan:

1. The ADAPT complaint on impediments to accessibility in 1995 is described, but there is no acknowledgement that more than 120 multi-family sites were cited and complied by 2008.
2. Currently, the funding for third party accessibility review and inspection has been eliminated, and no housing staff person has been assigned since 2008 to monitor compliance at the same level that existed between the signing of the Voluntary Compliance Agreement in 1997 and 2008.
3. The funding of a S.M.A.R.T. Housing fast track review team has been eliminated since 2008, and this incentive to great increased levels of safe, mixed-income, accessible, reasonably-priced and transit-oriented housing has been discontinued.
4. The recently adopted Source of Income ordinance is being challenged in both the Texas courts and in the Texas Legislature.
5. The Texas formula for promoting geographic dispersion in affordable housing is scheduled for arguments before the United States Supreme Court in January, 2015.
6. The impact of a new City Council with single-member districts for the first time in 2015 on housing developments requiring City Council action for funding or zoning is unknown.
7. A proposed amendment to increase housing affordability opportunities through micro-units was approved in December 2014.
8. A proposed amendment to increase housing affordability opportunities through modification of transit-oriented standards was approved in November 2014.
9. A proposed amendment to increase housing affordability opportunities through modification of secondary apartment standards is pending.
10. A proposed amendment to increase housing affordability through modification of University Neighborhood Overlay standards was approved in 2014.

11. A proposed amendment to increase housing affordability standards through modification of Rainey Street neighborhood standards is pending.
12. A proposed amendment to reduce the number of unrelated persons who can live in a single-family dwelling was approved in 2014.
13. A proposed amendment to simplify the process for securing a repair permit for existing housing is pending.

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January 9, 2015

Erica Leak, Housing Policy and Planning Manager
Neighborhood Housing and Community Development
City of Austin
Austin TX

via e mail to Erica.Leak@austintexas.gov

Dear Ms. Leak:

We write to submit comments on the 12/17 draft Analysis of Impediments to Fair Housing.

We note the inclusion of some helpful data, which stakeholders had requested be included such as a precursor of the AI, the 1979 Austin Housing Patterns Study, data on restrictive covenants, information on racial zoning established under the City of Austin Koch and Fowler master zoning plan, and findings in the final draft AI that the effects of those racially motivated policies and practices persist on into the present day.

With a section titled An Integrated Austin, we note the intent to frame the issue of fair housing as an ideal. Yet, couching fair housing as an “ideal” without also setting out specific action steps to reach this ideal implies the city views an integrated Austin as an unlikely or a distant possibility. This is inappropriate and calls into question the city’s commitment to actually affirmatively further fair housing.

This brings us to our central criticism: the document fails to propose specific actions that will overcome the existing barriers to fair housing and that are tied to a timeline. This failure renders the draft AI both ineffective and noncompliant with HUD regulations.

We base this criticism on our careful reading of the HUD statutes and the HUD Fair Housing Planning Guide.

Instead of recommending specific actions with explicit implementation dates, the AI repeatedly promises to “explore” specific actions. An AI by definition must instead state clearly what actions will be undertaken and when.

For example, the 12/17 draft changes specific actions steps we had recommended to: ...explore creating of/or modifying density bonus overlays and other incentives for on-site housing affordability targeting <50% and 60% MFI households (rental) and 80% MFI (ownership) for a range of household sizes. This is not an action step as defined in the HUD Fair Housing Planning Guide.

The lack of concrete recommendations in the 12/17 draft plan to actually act on overcoming fair housing impediments can be seen again, in the action step related to current development regulations. The 12/17 draft relies on non-specified actions to increase the supply of housing as a principal strategy to overcome residential segregation, ignoring the fact that a non-targeted increase in housing stock will not overcome patterns of housing segregation in existing neighborhoods, nor will it even produce housing that is affordable to the majority of people who are members of protected classes whose incomes are substantially lower than those who can afford market rate housing.

In sum, we object to the manner in which the draft AI changes the specific action steps that we proposed into non-substantive and non-actionable observations. We are attaching three documents: Table showing our December 8 comments and how they were addressed in the Dec. 17 draft; List of specific changes to the revisions to our original recommendations that would restore their meaning and their actionability; and List of materials that is required under the HUD regulations and the HUD Fair Housing Planning Guide to be included in the AI, which has not been made available to the public.

Further, since the revised AI must contain specific policy and program actions, including recommended revisions to City ordinances and policies, we remind the City staff that the City Council must review and adopt the AI prior to submission to HUD. The commitment to make such policy changes is not an action that can be delegated to the city staff or city manager.

We look forward to working with you to complete an Analysis of Impediments, which serves as our city's blueprint for affirmatively furthering fair housing.

Sincerely,

Liz Mueller

Karen Paup

Attachment 1: Chart comparing AI recommendations

Attachment 2: Recommended modifications

Attachment 3: Required AI materials not yet provided

Barrier	Activity	In 12/19 BBC draft?	Notes
Koch and Fowler's city master plan, restrictive covenants and related public actions established patterns of racial and ethnic segregation, which remain today.	Create density bonus overlays and other incentives, which offer incentives to include, on-site, housing affordable to households below 60% MFI for rental and 80% for homeowners in for a range of household sizes. Prioritize buying state land and seeing that UT lands, which are high opportunity areas, developed with significant amounts of affordable housing.	explore	State as specific action
See above.		explore	State as specific action
See above.	Increase access to affordable housing in all council districts.	YES	Support stronger language of new draft
Except for VMU and a few subsidized properties, current city policy, with its emphasis on increasing density, is contributing to decreased affordability and loss of affordable housing stock for people who are members of protected classes in high and emerging opportunity areas	Recognize that CodeNext must contain specific incentives to create <50, 60, and 80% MFI units.	explore	State as specific action
VMU incentives are producing units in higher opportunity areas but most other incentives are not. Not following PUD ordinance cost lower income Austinites and presumably people who are minorities, have disabilities, have children, or are elderly hundreds of opportunities to obtain housing in redeveloping areas of the city	Revise other incentive programs to be more like VMU in terms of formula for calculating number of units, term length, on site requirement.	explore	State as specific action
Under VMU and PUD different MFI requirements in different geographic areas limits housing choice.	Revise VMU, PUD to require 60% MFI rental and 80% owner throughout Austin.	NO	
City density programs (with the exception of the Rainey incentive program) are structured in such a way as to provide no incentive for family-oriented units.	Provide city programs to incentivize including family-oriented units in high opportunity areas.	NO	

Expiration of affordability periods threatens to take away housing choices for people who are members of protected classes.	Secure longer affordability periods for VMU and other programs that are successful in providing affordable housing.	NO	
Our only incentive program with a record of producing units for homeownership, S.M.A.R.T. Housing, has geographically concentrated people who are members of protected classes. See Hilde report.	Revise S.M.A.R.T. Housing to function in high opportunity areas.	NO	
Subsidized programs are heavily concentrated in areas of the city where there are high concentrations of people who are members of protected classes. See Hilde report.	Continue to monitor the city's affordable housing programs for geographic distribution of units produced and preserved under city programs.	NO	Move to actions so it can be tracked to completion.
The 1996 Analysis of Impediments to Fair Housing recommended adding Source of Income to the city's fair housing ordinance. Since then the Austin Tenants Council has documented the refusal to rent to voucher holders in many areas of the city and a fair housing complaint has been filed with the city over this issue. (Include maps from Tenants Council survey)	Add Source of Income to city Fair Housing ordinance, require units with city incentives or subsidies to accept vouchers.		
While Source of Income will broaden choices for voucher holders, Figure II-12 indicates choice will still be constrained by limited buying power of voucher.	Work with Housing Authority to adopt Small Area Rents.	YES	State as specific action
Gentrification poses a serious threat to housing choice for people who are minorities, have children, have disabilities, or are elderly.	Implement Homestead Preservation Act and fully utilize inclusionary housing tools available under this act.	NO	
Outside of NHCD, city departments lack understanding of the city's legal obligation to affirmatively further fair housing.	Provide fair housing training of city staff in planning, development review, economic development, and other city departments with impact on housing development and conditions that affect people who are members of protected classes	NO	

Attachment 2: Recommended modifications

State activities in Fair Housing Action Plan as actions steps

Examples of current language: “explore,” “work through”

Revision: State as specific actions.

Comment: HUD guidance requires specific actions.

Relate recommendations directly to affirmatively furthering fair housing

Current language (FHAP #4): “Work through the CodeNEXT process to modify land use and regulatory requirements to expand housing choice and reduce housing access barriers.”

Recommended revision: Through the CodeNEXT process, ensure the use of regulatory elements such as site area requirements as incentives to produce housing affordable to renters at 50% or 60% MFI and owners at 80% MFI.

Comment: The lack of specificity in the 12/17 draft has led readers to view it as a general recommendation related to housing affordability in the market rather than one related to affirmatively furthering fair housing for people who are members of classes protected under the Fair Housing Act.

Modify language regarding inclusionary zoning on Section V, p. 4 #9

Current language: “The city is limited in its ability by state law to use inclusionary zoning as a tool to broaden housing choice. Texas state law limits municipalities’ tools to expand housing choice through a rent control statute and by preventing municipalities from enacting laws that set a maximum price for privately produced residential housing (sections 214.905 and 214.902). However, there are exceptions: maximum prices established as part of development incentive programs and for sale housing developed as part of a land bank are allowed.”

To adequately reflect the law, this language should be changed to state:

“The city is limited in its ability by state law to use inclusionary zoning as a tool to broaden housing choice. Texas state law limits municipalities’ tools to expand housing choice through a rent control statute and by preventing municipalities from enacting laws that set a maximum price for privately produced residential housing (sections 214.905 and 214.902). However, there are exceptions: maximum prices established as part of development incentive programs, housing in a homestead preservation district, and for sale housing developed as part of a land bank are allowed.”

Comment: The state law on rent control does not bar inclusionary zoning for rental housing. It says a city may enact rent control when an emergency exists due to a disaster and sets out the procedures for that, but it does not explicitly bar municipalities from enacting rent control in other situations. Home rule cities in Texas have broad authority to enact laws to advance the social welfare unless Texas Legislature or Texas Constitution explicitly bars their actions.

Sec. 214.902. RENT CONTROL. (a) The governing body of a municipality may, by ordinance, establish rent control if:
(1) the governing body finds that a housing emergency exists due to a disaster as defined by Section 418.004, Government Code;
and
(2) the governor approves the ordinance.
(b) The governing body shall continue or discontinue rent control in the same manner that the governor continues or discontinues a state of disaster under Section 418.014, Government Code.

Increase priority to high, clarify confusing “lack of codes” language V p. 3 #8:
Change action related to this barrier to high priority.

Current language:

“Historical lack of city codes and age of and funding for parks in different neighborhoods may disproportionately impact protected classes, influence housing preferences and restrict access to opportunity.”

Revision: “The City’s historical lack of enforcement of city codes governing the maintenance of housing stock and age of and funding for parks in different neighborhoods disproportionally impacts protected classes, influences housing preferences, and restricts access to opportunities.”

Comment: The reference to “lack of city codes” in the 12/17 draft is confusing. The city has codes, but has failed to engage in proactive enforcement of the codes as they pertain to the health and safety conditions of rental units. We recommend that this provision specifically reference the city’s health and safety codes governing residential housing, and also reference the lack of enforcement of these codes.

Also, the city code department recently released data on the city’s rental registration program to target the most problematic properties, for multifamily complexes with repeated code violations. These properties are located in areas with high concentrations of racial and ethnic minorities.

Make code enforcement an action step V p. 3 #8:

Current language: “Collaborate with the Entrepreneurship and Community Development Clinic of the University of Texas Law School to identify funding mechanisms to support improvement of health and safety of housing stock within the city.”

Revision: (from the Clinic's report on problem properties released in 2013)

"Adopt the following policies recommended by the Entrepreneurship and Community Development Clinic of the University of Texas School of Law in its report on: "Addressing Problem Properties: Legal and Policy Tools for a Safer Rundberg and Safer Austin" (Aug. 2013):

<http://www.utexas.edu/law/clinics/community/Executive%20Summary%20Rundberg%20Problem%20Properties%20Report.pdf>

- a. Continue work to build a stronger code enforcement program for dangerous multifamily properties, including comprehensive inspections of problem properties, aggressive prosecution of laws against egregious code violations, and creation of a remediation program to repair rental properties when owners fail to do so. Fund the program through code enforcement fines and rental registration and inspection fees.
- b. Create a citywide community prosecutor program, modeled on the City of Dallas program, where community prosecutors from the City Attorney's office have offices within the community and focus on code compliance, criminal nuisance issues, and other neighborhood quality of life issues utilizing community-focused strategies.
- c. Create a stronger property information system to inform planning, intervention, and research around problem properties, integrating data from the Code Compliance Department, the Police Department, and other city departments. The system should also allow the public access to track the status of code complaints and other information on problem properties in their neighborhoods.
- d. Create a Rehabilitation and Affordable Housing Preservation Program for Older Multifamily Properties. The City of Austin should create a program that provides low-interest financing to multifamily property owners with repair challenges in order to help the owners rehabilitate their properties, while tying the assistance to affordable housing preservation."

Make action step, modify program beneficiary demographic data language

Current language: Continue to monitor the city's affordable housing programs for geographic distribution of units produced and preserved under city programs.

Revision: "Gather demographic information of renters and homebuyers in the city's incentive and development agreement programs, including race, ethnicity, familial status, and household size. Use this data to monitor the city's affordable housing programs for geographic distribution of units produced and preserved under city programs. Continue to monitor the city's other affordable housing programs for geographic distribution of units produced and preserved under city programs."

Attachment 3: Required AI materials not yet provided

1. Timeline for completing activities, as noted above;
2. Data on disparities in access to community assets such as parks,
3. Data comparing how significantly recent policies on fund allocation are increasing the choices that people who have a disability, people who are elderly, families with children, people who are of color, and people who are members of other protected classes have in where they live; and
4. Demographic data analyzing fair housing choice of people participating in government-assisted housing programs within the city. To the extent the city does not currently collect this data, the AI should include an action step to begin collecting and analyzing it. To the extent that this data is already available from the city and from the Texas Department of Housing and Community Affairs, it should be analyzed in the AI.
5. HUD regulations and guidance provide that until this information is made available and the public is allowed and opportunity to review and comment upon it the City cannot adopt the AI.

January 9, 2015

Ms. Erica Leak, Housing Policy and Planning Manager
Neighborhood Housing and Community Development Department
City of Austin
Austin, Texas

Sent via e mail to Erica.Leak@austintexas.gov

Re: Comments to City of Austin's Draft Analysis of Impediments

Dear Ms. Leak:

Following up on the comments that Karen Paup and Liz Mueller sent to the City, I am submitting the following additional comments regarding the City of Austin's draft of its Analysis of Impediments.

I. Recommendation #1: Modify language regarding inclusionary zoning on Section 5, Page 4 (#9)

In addition to the change recommended by Karen and Liz (which adds important language concerning the state law exemption in the Local Government Code, Section 214.905 for homestead preservation districts), remove the words "through a rent control statute" so that the final language reads:

Recommended Language:

"The city is limited in its ability by state law to use inclusionary zoning as a tool to broaden housing choice. Texas state law limits municipalities' tools to expand housing choice by preventing municipalities from enacting laws that set a maximum price for privately produced residential housing (sections 214.905 and 214.902). However, there are exceptions: maximum prices established as part of development incentive programs, housing in a homestead preservation district, and for sale housing developed as part of a land bank are allowed."

II. Recommendation #2. Designate park access as a separate barrier from code enforcement on page Section V, page 3, and create a separate action step concerning park access for members of protected classes in the City.

I support the language Liz and Karen sent regarding the City's historical lack of enforcement of city codes for multifamily residential housing. I also recommend that the issue of code enforcement be separate from the issue park access, since these are two entirely different types of issues and demand two different types of responses. I also continue my recommendation offered in prior meetings with the City and its

consultant to add data in the AI Report regarding disparate access to parks facilities in the City, utilizing the GIS maps developed by the Parks and Recreation Department, and overlaying this data with information on neighborhoods with high concentrations of members of protected classes, in particular, Hispanic and African-American households, to be able to quantify in more detail the scope of this barrier. I would also like to clarify that the principal barrier with lack of code enforcement pertains to multifamily housing stock, not single family housing.

Current Language:

“Historical lack of city codes and age of and funding for parks in different neighborhoods may disproportionately impact protected classes, influence housing preferences and restrict access to opportunity.”

Recommended Language:

“The City’s historical lack of enforcement of city codes governing the maintenance of multifamily housing stock disproportionally impacts protected classes, influences housing preferences, and restricts access to opportunities.”

Then add as an additional barrier:

“The City’s historical lack of funding for parks in different neighborhoods disproportionally impacts protected classes, influences housing preferences, and restricts access to opportunities.”

For this latter barrier concerning parks, add an action step to read as follows:

“Provide funding to create public parks in areas of the City where high concentrations of persons from protected classes do not live within ¼-mile walking distance of a park. Cut the access gap in half by 2020.”

III. Additional Action Steps Needed for the following:

As Karen and Liz point out, there are several recommendation we previously sent to the City regarding barriers and action steps that have not been incorporated in the City’s recent draft of the AI. In particular, I would like to reemphasize the following recommendations. I have added some more specific language regarding these barriers and the action steps needed:

A. Barrier: City density bonus/incentive programs (with the exception of the Rainey Street density bonus program) are structured in such a way as to provide no incentives for family-oriented units.

Action steps: Collect data on the numbers of families with children residing in units created through the City’s density bonus and other incentive programs. Modify the

city's density programs to incentivize the inclusion of family-oriented units in high opportunity areas.

B. Barrier: Expiration of affordability periods threatens to take away housing choices for people who are members of protected classes.

Action step: Secure longer affordability periods for VMU and other city affordable housing programs.

C. Barrier: Gentrification in several Austin neighborhoods poses a serious threat to housing choice for people who are minorities, have children, have disabilities, or are elderly.

Action step: Designate Homestead Preservation Zones in all eligible areas of the City and fully utilize the inclusionary housing tools available under this Texas Homestead Preservation Act, as well as the Homestead Preservation Reinvestment Zone tool (the "HPD TIF"), to provide and preserve affordable housing opportunities in these vulnerable neighborhoods.

D. Barrier: Outside of NHCD, city departments lack understanding of the City's legal obligations to affirmatively further fair housing. There is also a broad lack of familiarity across the City with the concepts and obligations of affirmatively furthering fair housing.

Action steps:

1. Provide fair housing training of city staff in planning, development review, economic development, and other city departments that have an impact on housing development and conditions that affect people who are members of protected classes.
2. When working on changes to the City's codes, including Code Next, educate different stakeholders involved about the City's legal obligations to create economic, racial, and ethnic diversity as a core value in each neighborhood and in the City as a whole.
3. Add to the City's affordable housing impact statement, which is used in code and zoning changes, a "Fair Housing Impact" statement, which would analyze the impact of the change on fair housing opportunities and the City's duty to affirmatively further fair housing in regards to all protected classes.

E. Barrier: Several residential development projects on government-owned land have failed to include or designate affordable housing opportunities for families with children, including the Plaza Saltillo tract development owned by Cap Metro, the City's Seaholm redevelopment, and the City's Green Water Treatment plant development.

Action steps: On City-owned land, adopt a requirement that at least 25% of the units will be affordable and that at least half of those units will be affordable for families with

children and leased or sold to families with children. Reach out to Cap Metro and other governmental entities to incorporate affordable housing opportunities for families with children on government-owned land undergoing redevelopment.

Sincerely,

Heather K. Way
512-632-1695
hway.austin@gmail.com



January 9, 2014

City of Austin
Neighborhood Housing and Community
Development Office
P.O. Box 1088
Austin, Texas 78767

RE: Comments on the Draft City of Austin Analysis of Impediments to Fair Housing Choice

Dear NHCD:

Texas Appleseed appreciates the opportunity to provide comments on the City of Austin's Draft Analysis of Impediments to Fair Housing Choice (AI).

Understand there will be information added after the comment period closes. Look forward to the opportunity to provide public comment on that draft. We have organized our comments to follow the structure of the draft, although there are issues that reappear in several sections.

Overall, the Draft AI is a substantial step forward in the identification and analysis of barriers to fair housing choice in the City of Austin. Contains info and maps, gets a lot of impediments right – needs tweaks to action plan

I. Executive Summary

- a. The City's choice to incorporate data and information from HUD's proposed AFFH regulation is commendable. It has resulted in a better and more comprehensive AI, and will minimize the adjustments the City will need to make in the transition to the new Assessment of Fair Housing process.
- b. We recommend that the language in the first sentence of ES-1 be changed from "federal housing funds" to "federal housing and community development funds." This is both more accurate, and reinforces that the obligation to Affirmatively Further Fair Housing (AFFH) is not limited to housing programs and funds, but applies to all federal housing and community development funds,

including those used for infrastructure and economic development. In fact, HUD's Fair Housing Planning Guide (FHPG) is clear that,

“[a]lthough the grantee's AFFH obligation arises in connection with the receipt of Federal funding, its AFFH obligation is not restricted to the design and operation of HUD-funded programs at the State or local level. The AFFH obligation extends to all housing and housing-related activities in the grantee's jurisdictional area whether publicly or privately funded.” (FHPG, 1-3)

HUD's proposed AFFH regulation also includes a clearer and more robust definition of what it means to affirmatively further fair housing, incorporating both increasing housing mobility and revitalizing historically disinvested neighborhoods. Entitlement jurisdictions and other grantees are expected to employ both strategies: to stabilize and revitalize neighborhoods that constitute racially/ethnically concentrated areas of poverty and to promote greater mobility and access to exclusionary areas offering vital assets such as quality schools, employment, and transportation for members of protected classes.

- c. We also recommend that the language of the second sentence in the second paragraph on ES-1 be changed. The language currently reads “improve the quality and conditions of the neighborhoods affordable to protected classes and low income residents.” Not only does this language imply that these neighborhoods will continue to be segregated – notwithstanding the previous clause's mention of expanding housing opportunities in areas that have been exclusionary – it obscures the City's obligation under the Fair Housing Act to redress its segregation-based historical disinvestment in these neighborhoods, and the ultimate goal of racial integration in both historically white-segregated and historically minority-segregated areas of the City.

Although the government actions that mandated de jure segregation may be in the past, the effects of segregation continue and are often perpetuated by facially neutral public policies and government decisions. Nor can it be ignored that it was government action that created segregated living patterns in the first place. Housing segregation does not produce “separate but equal” neighborhoods (as illegal as that would be in and of itself), it paints a target on minority neighborhoods that makes other forms of discrimination easier to perpetrate and maintain.

- d. Under the Section of the Executive Summary titled “Fair Housing Action Plan” (ES-3), the draft states that “the first step in implementation of the AI will be for the City to facilitate dialogue with appropriate partners” including “a determination of specific action items, responsibilities, timeframe for completion and measurable impacts.” First, “[o]ther City of Austin Departments” are not

separate partners, they are part of the City of Austin and are incorporated and committed in the City's AI. Second, HUD's FHPG states that specific actions should be organized into a prioritized list "[w]ith timetables, milestones, and measurable results." (FHPG, 2-6; *see also*, 2-24, 2-25, and 4-3) We understand that the City cannot commit outside partners to specific actions, and appreciate the City's commitment to working with outside agencies and groups and to add actions and strategies to address the identified barriers to fair housing through these partnerships, however, the final AI must include actions items, responsibilities, timeframes, and measurable impacts for the action steps the City includes in its Fair Housing Action Plan.¹

II. Demographic and Housing Profile

- a. Both Austin's rising level of poverty and loss of African-American population are troubling. In addition to broader affordability issues, the fact that the second most common reason for leaving the City of Austin, and a larger factor for African American families than for other races/ethnicities, was school quality, points to serious educational inequities that should be analyzed in more detail in the AI. Residential segregation is the major determinant of the level of school segregation, and low-income majority minority schools are the lowest performers.²

In 2002-2003, only 28% of all white public school students (K-12) attended high-poverty schools (defined as schools where 40% or more of the students were eligible for free or reduced price lunches—a proxy for poverty). In contrast, 71% of all African American public school students and 73% of all Latino public school students attended high-poverty schools during the same period. Meanwhile, 1.4 million African American students (1 of every 6) and nearly 1 million Latino students (1 of every 9) attend schools where 99% to 100% of the students are people of color.³

- b. Families with a household member with a disability also cited schools as a reason for leaving Austin. This suggests there may be an additional problem of lack of services for children with disabilities in Austin schools that would bear further investigation and analysis.

¹ It is our understanding that the City is working on this step now and will include these in the final version of the AI. We look forward to an opportunity to comment on the draft once additional information has been added.

² *See, e.g.* Kerilee Horan, "New Study Shows Racially Segregated Schools Not Equal", *District Administration*, July 2010. Available: <http://www.districtadministration.com/article/new-study-shows-racially-segregated-schools-not-equal>

³ PRACC, NFHA, NLIHC, NAACP LDF, LCCR, *et. al.*, Residential Segregation and Housing Discrimination in the United States: A Response to the Periodic Report of the United States, January 2008. Available: <http://www.prrac.org/pdf/FinalCERDHousingDiscriminationReport.pdf>

- c. Access to transportation is a major reason cited by persons with disabilities as a barrier to moving to more affordable areas. We also note and 42% cited crime/safety issues as a reason they would like to move from their current homes. The combination of “do not have a car” and “no bus services elsewhere” totals 68%. As the AI states, “although the cost of housing in the Austin area tends to reduce the farther one lives from the city center, the number of bus routes and frequency and times of services also decrease.” The lack of transit options in areas outside the city center, not only in areas where higher quality housing is more affordable but in historically exclusionary areas with high quality community assets (including schools) and more access to opportunity, perpetuates segregation and denies protected classes of fair housing choice. Opposition to public transit access in these neighborhoods can also be a proxy for opposition to racial integration. For example, the City Council of Beavercreek, Ohio voted to deny the Regional Transit Authority’s application to place bus stops along a major boulevard with access to a medical center, university, and shopping mall which denied the disproportionately African American bus ridership full access to community assets. The FHA’s Office of Civil Rights found that the City had no substantial legitimate justification for its decision, and the Federal Highway Administration found that the City had violated Title VI of the Civil Rights Act of 1964, putting \$10 million in federal transportation funds at risk. *Advocates for Basic Legal Equality, Inc. complaint to the Federal Highway Administration against the City of Beavercreek, Ohio* (2013)⁴
- d. BBC Consulting is careful to specify that the Phase II AI Survey found “little evidence of **self-reported** racial bias” and its breakdown of self-reports by geographic area is useful information, particularly as it validates opposition to affordable housing - seen in the geographic distribution of votes against the City’s 2102 Affordable Housing Bond - as a proxy for opposition to racial integrations. (emphasis added) However, this section of the AI does tend to elide the distinction between self-reported racial bias and actual racial bias. People are generally reluctant to express feelings or beliefs that might identify them as prejudiced, perhaps more importantly, research on racial bias has increasingly focused on implicit bias – the automatic, and often unconscious, association of stereotypes and attitudes with particular social and racial groups. Residents may be completely sincere in reporting their lack of racial bias, but behave in ways that have a negative impact on protected classes

⁴ We would also point to the Beavercreek case as an example of the civil rights obligations attached to federal funds other than housing and community development funds, and of the need to integrate community planning instead of siloing housing funds.

because of implicit bias. Additional questions about bias towards other protected classes, such as persons with disabilities, should be added to the survey.

- e. Mapping only areas with concentration of non-Hispanic whites greater than 90% misrepresents the number of majority-white segregated areas in the City and creates the impression that white-segregated areas of Austin are more integrated than they are.
- f. The increasing concentrations of people of color in R/ECAPs, an increase of almost 20%, is extremely disturbing and addressing this should be a priority for Austin.
- g. The “Historical background of segregation” section points out that lack of public infrastructure (e.g. sidewalks) functioned to segregate persons with disabilities. The draft, however, does not include an analysis of where those types of infrastructure and public facility barriers still exist. The draft notes that “specific data on the availability of accessible housing, condition of such housing, and adequacy of public and private infrastructure are not easily available from secondary data sources.” Assembling and analyzing this data should be a priority for the City of Austin. Particularly since focus group participants identified public infrastructure deficiencies as a barrier to housing choice for persons with disabilities, and the lack of enforcement of the Americans with Disabilities Act (ADA) design and construction requirements.
- h. The draft’s discussion of housing access for persons with disabilities makes an important point about the meaning of “affordable” housing. The City of Austin needs not only more affordable housing, but housing that is affordable to families at different income levels. The draft points out that affordability for many persons with disabilities means deeply subsidized housing. The 2015 Supplemental Security Income (SSI) federal benefit limit for a single-person household is \$733 per month and \$8,804.43 per year.⁵ Housing affordable to persons at 80% of Median Family Income (MFI) for the Austin area (\$42,250 per year for a single-person household); 60% of MFI (\$31,680 per year); or even 30% of MFI (\$15,850) is not affordable to SSI recipients. Focus group participants said that in their experience, “affordable” units were reserved for households at 80% of MFI.
- i. The need for affordable, accessible housing with access to public transit for persons with disabilities requires the City’s Transit Oriented Development (TOD) initiatives to include accessible units, and units affordable to

⁵ Only persons who are aged, blind, or disabled and have little or no other income are eligible for SSI.

persons with disabilities whose source of income is SSI or SSDI.

- j. Rising property taxes were frequently cited as a reason for leaving the City of Austin, either voluntarily or involuntarily, by members of protected classes. The City of Austin should commit to examining and implementing policies that provide property tax relief for low-income homeowners like Homestead Preservation Areas, for example, to help preserve economic and racial integration in Austin as the housing market changes.
- k. The draft correctly notes that the concentration of subsidized rental units exacerbates racial, ethnic, and poverty concentrations. Continuing to site government assisted housing in these same areas perpetuates segregation and deprives families of opportunity, and impedes the revitalization of these neighborhoods. The City of Austin must make siting in high opportunity areas a condition of any funding it controls, including programs like density bonuses. Again, the location of transit to increase access to these areas is critical.
- l. Austin's passage of an ordinance prohibiting discrimination on the basis of source of income is an extremely important step forward towards fair and free housing choice. Members of protected classes are more likely to need assisted housing and source of income discrimination functions as a highly efficient proxy for discrimination based on race, national origin, disability, or familial status. We strongly recommend that the City conduct testing. For example, a 2014 study by the Chicago Lawyers' Committee for Civil Rights Under Law, conducted using matched pair testing, found high rates of discrimination:
 - Landlords discriminated against HCV holders of any race 59% of the time. Much of this discrimination involved steering voucher holders to particular buildings and neighborhoods based on race.
 - There was racial discrimination in 33% of tests; national origin discrimination in 42% of tests; familial status discrimination in 25%; discrimination against persons with physical disabilities in 44% of tests; and discrimination against persons with mental disabilities in 17% of cases.

These numbers are even more disturbing given that Chicago prohibits source of income discrimination and that this set of tests was conducted on landlords that already had tenants with vouchers.

LCCR's tests on landlords in high opportunity areas who did not have existing tenants with vouchers showed even higher rates of discrimination. Landlords refused to rent to white voucher holders

55% of the time. LCCR then sent African-American testers to landlords who had agreed to accept white HCV holders; 53% of those landlords refused to rent to African American HCV holders.⁶

III. Access to Opportunity

- a. The failure to examine access to transit, housing, jobs, high quality schools, and community assets in the area surrounding the City of Austin's boundaries is a weakness of the draft, because the City and the Region are so interconnected, and that at least a partial analysis was available in the Geography of Opportunity report. The draft does identify, however, a major barrier to fair housing choice and access to opportunity, limited public transportation and services outside the City's core. Again, the exclusion of protected classes from specific area because there is no public transit access is likely to be a violation of both fair housing and other civil rights requirements.
- b. The results of the neighborhood equal treatment survey might have been more revealing if the question had asked if the respondents felt their neighborhood was treated better than other neighborhoods or worse than other neighborhoods. Respondents' explanations, however, tends to suggest that the question was assumed to refer negative unequal treatment, and the analysis by race and geographic location is very helpful. We would also note that, just as people cannot complain about discrimination they do not know they have experienced, people may have difficulty identifying disparities in different neighborhoods as disparities in treatment, or have limited knowledge of the kind of disparities that exist. We believe that the survey tends to understate disparities in treatment.
- c. The examples of unequal treatment cover a common set of disparities experienced by historically disinvested neighborhoods:
 - Slow response by City departments;
 - Location of undesirable uses, including environmentally harmful uses like landfills, in these neighborhoods;
 - Inequitable access to public transit and poorer amenities (like bus shelters) and services associated with transit;
 - Slower responses from law enforcement contributing to increased exposure to crime;

⁶ Chicago LCCR, *Final Report: Fair Housing Testing and Survey Project for the Chicago Housing Authority*, (2014) Available: <http://cafha.net/wp-content/uploads/2014/02/CLCCRUL-CHA-testing-report.pdf>

- Substandard infrastructure, from streets to parks;
- Failure of the City to enforce the City Code against landlords with substandard or even dangerous property;

Responses to the survey question “[w]hy are you dissatisfied with your current housing” in addition to affordability concerns, reflect the same issues: crime, lack of access to jobs, inadequate access to transit, too far from a grocery store with fresh food, lack of code enforcement against landlords, and school quality.

Along with race and income as reasons for disparate treatment, participants identified disparities in organization and political power between neighborhoods (highly correlated with race and income, of course) as a reason for unequal treatment. The draft should include a review and analysis of City policies related to siting of housing, undesirable uses, and community assets; prioritization of code enforcement and other types of city department responses (e.g. is response solely reactive to complaints); prioritization of infrastructure and public facilities projects and maintenance; and how community input is sought and incorporated into City decisions, for example.

- c. Exposure to crime was most cited reason for dissatisfaction with current housing. This suggests a review of City policing and priorities is necessary.
- d. Given the prevalence of the access to fresh food as an issue, the draft should include an analysis of food access, particularly given the availability of tools like the U.S. Department of Agriculture’s Food Access Research Atlas. This analysis may also be helpful in determining whether retail redlining is a significant private barrier to fair housing choice.
- e. Section III includes a section on Equitable Access to Community Amenities, which identifies a number of significant disparities in access to community assets. This section should include the type of data noted by BBC – and in-depth review of the qualities of facilities, services, infrastructure, and other assets. The City needs to conduct this survey in order to have data on which to base funding decisions. Failing to identify specific inequities does not excuse the City from its obligation to remedy them.

IV. Fair Housing Environment

- a. The draft correctly points out that self-reports of discrimination do not capture discrimination that the victim is unaware of. This is also, of course, true of complaint filings. The attribution of discrimination to source of

income by protected class households is also subject to this problem. As noted earlier in our comments, source of income discrimination is frequently a proxy for discrimination based on race, disability, or other protected class status. It is not possible to get an accurate picture of the level of discrimination in housing without testing. We urge the City to collaborate with partners to conduct a more comprehensive and targeted testing program which is repeated on a regular basis to track discrimination levels.

- b. Payday and other predatory loans do have a disproportionate negative impact on the financial stability of low-income households. An April 2014 report by the Consumer Financial Protection Bureau shows that the largest proportion of payday borrowers had annual incomes between \$10,000 and \$20,000. Seventy-five percent of payday borrowers are employed.⁷ Although Austin has a payday lending ordinance, the draft points out that there is little compliance with even less restrictive state law, suggesting that the City's enforcement of its ordinance is inadequate.
- c. Texas Appleseed submitted comments to the City on its CodeNEXT project stressing the importance of coordinating that process with the AI process because of the significant fair housing impact of zoning and land use laws. Because the code process is ongoing, the draft lacks an essential AI component, an analysis of the City's zoning and land use rules. The AI will not be complete until this analysis is included. This is also a missed opportunity for the City. If the fair housing implications of the new code were not considered and addressed, any new or amended rules that present barriers to fair housing choice will need to be rewritten again.
- d. The City's March 20, 2014 adoption of new maximum occupancy limits was a clear and egregious violation of its own fair housing ordinance. It does not require a disparate impact analysis to determine if a protected class was affected, the ordinance was clearly and openly aimed at students, a protected class under Austin's fair housing ordinance. The occupancy limits were generally referred to as the "stealth dorm ordinance" and there were numerous public comments demonstrating that the ordinance specifically targeted students.
- e. The draft's recommendation for improved data and record keeping in the City's density bonus program must be an action step in the fair housing plan, and must be accompanied by changes to the program rules that result in violations of the fair housing act. The draft identifies data showing that the way the program is currently operated results in the

⁷ CFPB, *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings*, April 24, 2013. Available: http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf

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affordable units produced being located in low opportunity areas, which are largely correlated with poverty and minority concentrations. This requires not only better record-keeping in the future, but a review of past program performance. The use of government resources to perpetuate segregation is unacceptable and illegal.

- f. The draft could have included better information on NIMBYism, which came up repeatedly as a barrier in the AI. For example, the State's draft AI did focus groups specifically with developers, and opposition to affordable or other housing that disproportionately serves members of protected classes is often part of the public record. Given the prevalence of NIMBYism as a barrier to housing mobility and access to opportunity in the data the AI does contain, the City must take active steps to address NIMBYism as part of its Fair Housing Plan.
- g. In addition to compliance with fair housing laws, the City has independent obligations to make programs available to persons with limited English proficiency (LEP.) We suggest the City review its LEP obligations and consult federal guidance on this issue.

V. Barriers and Fair Housing Action Plan

- a. While we agree that ease of implementation (including issues like the City's control over a program or process) should be a factor in prioritization, requiring that the barrier be addressable in the next 6-12 months is an inappropriate time limit. Prioritizing actions that can be completed within a year skews the Action Plan towards smaller barriers and actions and away from the most serious barriers. The history of segregation and discrimination is a long one, and their effects are ongoing. It is, unfortunately, not realistic to think that the inequities they have produced can be undone in 12 months. The Action Plan should be a combination of short and long term goals for the next five years, with the understanding that actions can be carried forward into the next AI if necessary.

Fair Housing Action Plan

- 1. As noted earlier in our comments, the plan should include the assignment of responsibility, timeline, and measurable outcomes included in the draft's chart.
- 2. There should be no conditional language related to the City's actions. The City can commit itself to specific actions steps within its own control.

3. The commitment to acquiring and preserving affordable housing near transit corridors must be accompanied by a commitment to expand transit access to high opportunity areas.
4. The City can and should require units with City incentives or subsidies to accept Housing Choice Vouchers regardless of a City ordinance banning source of income discrimination.
5. Non-compliance of property owners and builders does not require the City to “examine weakness in the current process”; it requires the City to implement changes that address the weaknesses identified by complaint data and lawsuits. The draft identifies two actions the City could take: 1) educate building inspectors about housing accessibility requirements and ensure that those issues are included in inspection reports; and 2) dedicate one or more code enforcement officer to ADA inspections and compliance. This is a good example of the kind of action to address a barrier that can be executed in 6-12 months.
6. The City of Austin’s payday lending ordinance is useless unless it is enforced. The City must enforce the ordinance.
7. The City should consider ways to address rising property taxes that displace low-income minority homeowners like the Homestead Preservation Areas.
8. The only infrastructure inequities specifically addressed in the Action Plan are parks. This is insufficient. The City must evaluate all public infrastructure, facilities, and services, and address inequities that deny equal housing choice or equal access to community assets and opportunity.
9. The City must consider whether the location of housing affirmatively furthers fair housing in all its housing funding and subsidy programs, including tax abatements.
10. The City must overhaul its code enforcement process. The Austin American Statesman has provided extensive coverage of how the current system has a disparate impact on protected classes. In addition to the failure to enforce accessibility requirements, the Code Compliance Division has repeatedly failed to protect low-income renters from substandard and dangerous (e.g. collapsing balconies) housing, failed to use an appropriate level of enforcement against landlords who violate the code, and has no proactive strategy to address specific areas where code violations by landlords are affecting not only their tenants but the entire

neighborhood. In addition to failing to prioritize the most significant and urgent code violations, the complaint-driven process has been used to target and harass low income Hispanic homeowners (i.e. <http://www.statesman.com/news/news/local/dozens-of-code-compliance-officers-descend-on-east/nRpWK/>) and is an example of how a facially neutral policy or process operates to discriminate against members of protected classes. When code compliance is more aggressive about a carport that's too close to the street than collapsing balconies, exposed wiring, and nonfunctioning smoke detectors, the City has a serious problem, but one it has full capacity to and control over fixing. This should be a priority action step.

"[W]here a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions."⁸ The AI is a tool to help communities eliminate disparities in opportunities for protected classes and create integrated and sustainable communities that benefit all their residents. This draft is a step forward for the City, but several elements need to be addressed before it is a complete and compliant AI.

Thank you for your consideration,

Madison Sloan
Director, Disaster Recovery and
Fair Housing Project

⁸ 114 Cong. Rec. 2276-2707 (1968)

From: Jamil Alam [<mailto:JAlam@ENDEAVOR-RE.com>]

Sent: Saturday, January 10, 2015 3:17 PM

To: NHCD

Subject: Action Plan comment from austintexas.gov

I have reviewed the Fair Housing Report by BBC Research.

My only comment would be that to the extent the COA elects to try to "encourage" affordable housing via a density bonus, that any inclusionary affordable housing only be applicable to the marginal FAR. If the COA tries to encourage affordable housing via a density bonus but imposes new inclusionary affordable housing requirements within the by-right FAR (that which existed before the density bonus), the policy will not only discourage affordable housing but it will discourage any residential development. The last thing this City needs is to impose policies that discourage residential development.

Thanks

Jamil Alam
1401 Gaston Ave
Austin, TX 78703
512-970-4111

From: Kristan Arrona <kristan@austinaptassoc.com>

Date: January 12, 2015 at 6:01:08 PM CST

To: "Leak, Erica" <Erica.Leak@austintexas.gov>

Subject: City of Austin Fair Housing AI

Here are my comments for Betsy. Thank you for the extension Erica. Kristan

Ms. Betsy Spencer, Director
Neighborhood Housing and Community Development Office
P.O. Box 1088
Austin, Texas 78767

Dear Ms. Spencer :

I am submitting the following comments on behalf of the Austin Apartment Association regarding the draft City of Austin Analysis of Impediments to Fair Housing Choice report prepared by BBC Research and Consulting.

The Austin Apartment Association supports many of the recommendations in this report, including creating more incentives to develop affordable housing, such as increased use of incentives like density bonus overlays, and improving information available to the public regarding housing choice. We also agree that overly complex land use regulations impact housing affordability and support the recommendation to work through the CodeNext process to appropriately modify land use and regulatory requirements that often increase the cost of development and cost of housing.

On the other hand, we take issue with the finding that “complaint data *and lawsuits* demonstrate non-compliance with property owners and builders with reasonable accommodations and accessibility requirements.” (emphasis added). According to data presented in the report, we acknowledge that a significant proportion of complaints are disability-related. However, the report does not appear to support the contention that there have been a spate of recent lawsuits regarding design and construction cases or reasonable accommodations. Furthermore, we are not aware of any justification for the statement that “this lack of compliance has contributed to the limited supply of accessible housing in Austin.” From our experience, fair housing law regarding reasonable modifications and accommodations is complex, and while the majority of rental property owners make every effort to be in compliance, others may not be fully aware of their responsibilities. In those cases in which an owner learns that a reasonable modification or accommodation is needed to be in compliance with the Act, those owners readily comply. That said, we support recommendations that would improve the city’s program making it easier for renters to receive funding for accessibility modifications.

We also take issue with the statement that there is steering due to “rigorous standards for rental agreements.” The report cites that rental property owners have “unreasonable look back periods in

tenant qualifications” and that “in tight rental markets, landlords often impose very strict guidelines and are more “choosy” in tenant selection. However, no supporting information beyond statements from “organizations that assist low income renters” is given to justify this statement. We are unaware of standards in rental agreements in Austin or rental criteria used by owners that go beyond industry norms.

In closing, our association spends considerable effort educating our members about their responsibilities under the Fair Housing Act and we hope that in the future, the city will make a greater effort to include the Austin Apartment Association in its fair housing outreach activities.

Our comments on this draft are preliminary given the relatively short time to provide input over the holiday season. We may have additional comments as this report goes through the adoption process.

Thank you for your consideration.

Sincerely,

Kristan Arrona
Executive Director

February 9, 2015

Erica Leak, Housing Policy and Planning Manager
Neighborhood Housing and Community Development
City of Austin
Austin TX

via e mail to Erica.Leak@austintexas.gov

Dear Ms. Leak:

We write to comment on the February 2, 2015 draft Fair Housing Action Plan (FHAP) for the City of Austin's Analysis of Impediments to Fair Housing (AI):

1. We note the draft FHAP's inclusion of numerous goals and activities to affirmatively further fair housing in this city. The FHAP anticipates that these goals and activities are to be accomplished over a short (one year), medium (one to two years), or long (greater than two years) time frame. HUD's Fair Housing Planning Guide calls for "timeframes, milestones, and measurable results." To comply with the Guide, the FHAP needs to state a more specific time frame for achieving the goals and activities currently listed as "long-term goals," which is defined in the document as more than two years.
2. The relationship with the partners listed in the draft FHAP is unclear because it is unclear that those partners have agreed to work toward the goals listed. Without clear agreement from the partners or city council action, the document lacks the measurability required by HUD. For each goal, we ask Neighborhood Housing to provide a description of how the staff will proceed with the partners, milestones, and dates for reaching the milestones.
3. For the 6th housing goal listed under the first fair housing barrier, we recommend also collecting data on other protected classes residing in units created through the City's incentive programs, beyond just families with children. This data is essential to evaluating the extent to which the city's major housing programs are affirmatively furthering fair housing. Thus, we recommend this language be modified to read: "Collect data on the numbers of families with children, household size, and other protected classes, residing in units created through the City's density bonus and other incentive programs." We had recommended in our December letter on the draft AI: "...collecting demographic information on tenants and buyers participating in the City's incentive and development agreement programs (e.g., VMU, SMART Housing, PUDs, the Domain, etc.), including familial status, household size, race and ethnicity."
4. For the language in the draft FHAP regarding parks (#10 in the fair housing barriers), we recommend that the two fair housing goals and activities here be

broken down into small action items that can be achieved in the short-term, rather than relegating this entire action to the “long term.”

5. The fair housing goals and activities listed for the 8th fair housing barrier concerning historical lack of enforcement of city codes are too vague. The language currently reads: “implement policies that correct health and safety deficiencies in maintenance of housing stock within the City.” Reiterating a prior recommendation of ours, we again ask that the City modify this language to read:

“Adopt the following policies recommended by the Entrepreneurship and Community Development Clinic of the University of Texas School of Law in its report on: “Addressing Problem Properties: Legal and Policy Tools for a Safer Rundberg and Safer Austin” (Aug. 2013):

<http://www.utexas.edu/law/clinics/community/Executive%20Summary%20Rundberg%20Problem%20Properties%20Report.pdf>

- a. Continue work to build a stronger code enforcement program for dangerous multifamily properties, including comprehensive inspections of problem properties, aggressive prosecution of laws against egregious code violations, and creation of a remediation program to repair rental properties when owners fail to do so. Fund the program through code enforcement fines and rental registration and inspection fees.
 - b. Create a citywide community prosecutor program, modeled on the City of Dallas program, where community prosecutors from the City Attorney’s office have offices within the community and focus on code compliance, criminal nuisance issues, and other neighborhood quality of life issues utilizing community-focused strategies.
 - c. Create a stronger property information system to inform planning, intervention, and research around problem properties, integrating data from the Code Compliance Department, the Police Department, and other city departments. The system should also allow the public access to track the status of code complaints and other information on problem properties in their neighborhoods.
 - d. Create a Rehabilitation and Affordable Housing Preservation Program for Older Multifamily Properties. The City of Austin should create a program that provides low-interest financing to multifamily property owners with repair challenges in order to help the owners rehabilitate their properties, while tying the assistance to affordable housing preservation.”
6. Reiterating a prior recommendation made by Heather Way, add the following fair housing goal/activity for fair housing barrier #11: “Add to the City’s affordable housing impact statement, which is used in code and zoning changes, a ‘Fair Housing Impact’ statement, which would analyze the impact of the change on fair housing opportunities and the City’s duty to affirmatively further fair housing in regards to all protected classes.”

7. Reiterating a prior recommendation by Heather Way, add the fair housing goal/activity for fair housing barrier #1: "On City-owned land, adopt a requirement that at least 25% of the units will be affordable and that at least half of those units will be affordable for families with children and leased or sold to families with children."
8. For the fair housing goal/activity that reads: "Work with Capital Metro to require inclusion of affordable housing opportunities for families with children on land owned by Cap Metro and undergoing redevelopment," incorporate language we suggested in prior correspondence to also reach out to "other governmental entities" in this regard, not just Cap Metro.

Prior to the submission of the AI to HUD, we request that all of the comments submitted to the City on the draft AI and FHAP and staff's responses be made available for public review.

Thank you for your consideration of our comments. We look forward to working with you to complete an Analysis of Impediments, which serves as our city's blueprint for affirmatively furthering fair housing.

Sincerely,

Karen Paup
512-477-8910
karen@texashousing.org

Heather Way
512-632-1695
hway.austin@gmail.com

Attachment 1: Heather Way January 9 e mail

Attachment 2: Recommended modifications (from January 9 letter)

Attachment 3: Required AI materials not yet provided (from January 9 letter)

Attachment 1: Heather Way (Jan. 9 2015 letter)

January 9, 2015

Ms. Erica Leak, Housing Policy and Planning Manager
Neighborhood Housing and Community Development Department
City of Austin
Austin, Texas

Sent via e mail to Erica.Leak@austintexas.gov

Re: Comments to City of Austin's Draft Analysis of Impediments

Dear Ms. Leak:

Following up on the comments that Karen Paup and Liz Mueller sent to the City, I am submitting the following additional comments regarding the City of Austin's draft of its Analysis of Impediments.

I. Recommendation #1: Modify language regarding inclusionary zoning on Section 5, Page 4 (#9)

In addition to the change recommended by Karen and Liz (which adds important language concerning the state law exemption in the Local Government Code, Section 214.905 for homestead preservation districts), remove the words "through a rent control statute" so that the final language reads:

Recommended Language:

"The city is limited in its ability by state law to use inclusionary zoning as a tool to broaden housing choice. Texas state law limits municipalities' tools to expand housing choice by preventing municipalities from enacting laws that set a maximum price for privately produced residential housing (sections 214.905 and 214.902). However, there are exceptions: maximum prices established as part of development incentive programs, housing in a homestead preservation district, and for sale housing developed as part of a land bank are allowed."

II. Recommendation #2. Designate park access as a separate barrier from code enforcement on page Section V, page 3, and create a separate action step concerning park access for members of protected classes in the City.

I support the language Liz and Karen sent regarding the City's historical lack of enforcement of city codes for multifamily residential housing. I also recommend that the issue of code enforcement be separate from the issue park access, since these are two entirely different types of issues and demand two different types of responses. I

also continue my recommendation offered in prior meetings with the City and its consultant to add data in the AI Report regarding disparate access to parks facilities in the City, utilizing the GIS maps developed by the Parks and Recreation Department, and overlaying this data with information on neighborhoods with high concentrations of members of protected classes, in particular, Hispanic and African-American households, to be able to quantify in more detail the scope of this barrier. I would also like to clarify that the principal barrier with lack of code enforcement pertains to multifamily housing stock, not single family housing.

Current Language:

“Historical lack of city codes and age of and funding for parks in different neighborhoods may disproportionately impact protected classes, influence housing preferences and restrict access to opportunity.”

Recommended Language:

“The City’s historical lack of enforcement of city codes governing the maintenance of multifamily housing stock disproportionally impacts protected classes, influences housing preferences, and restricts access to opportunities.”

Then add as an additional barrier:

“The City’s historical lack of funding for parks in different neighborhoods disproportionally impacts protected classes, influences housing preferences, and restricts access to opportunities.”

For this latter barrier concerning parks, add an action step to read as follows:

“Provide funding to create public parks in areas of the City where high concentrations of persons from protected classes do not live within ¼-mile walking distance of a park. Cut the access gap in half by 2020.”

III. Additional Action Steps Needed for the following:

As Karen and Liz point out, there are several recommendation we previously sent to the City regarding barriers and action steps that have not been incorporated in the City’s recent draft of the AI. In particular, I would like to reemphasize the following recommendations. I have added some more specific language regarding these barriers and the action steps needed:

A. Barrier: City density bonus/incentive programs (with the exception of the Rainey Street density bonus program) are structured in such a way as to provide no incentives for family-oriented units.

Action steps: Collect data on the numbers of families with children residing in units created through the City’s density bonus and other incentive programs. Modify the

city's density programs to incentivize the inclusion of family-oriented units in high opportunity areas.

B. Barrier: Expiration of affordability periods threatens to take away housing choices for people who are members of protected classes.

Action step: Secure longer affordability periods for VMU and other city affordable housing programs.

C. Barrier: Gentrification in several Austin neighborhoods poses a serious threat to housing choice for people who are minorities, have children, have disabilities, or are elderly.

Action step: Designate Homestead Preservation Zones in all eligible areas of the City and fully utilize the inclusionary housing tools available under this Texas Homestead Preservation Act, as well as the Homestead Preservation Reinvestment Zone tool (the "HPD TIF"), to provide and preserve affordable housing opportunities in these vulnerable neighborhoods.

D. Barrier: Outside of NHCD, city departments lack understanding of the City's legal obligations to affirmatively further fair housing. There is also a broad lack of familiarity across the City with the concepts and obligations of affirmatively furthering fair housing.

Action steps:

1. Provide fair housing training of city staff in planning, development review, economic development, and other city departments that have an impact on housing development and conditions that affect people who are members of protected classes.
2. When working on changes to the City's codes, including Code Next, educate different stakeholders involved about the City's legal obligations to create economic, racial, and ethnic diversity as a core value in each neighborhood and in the City as a whole.
3. Add to the City's affordable housing impact statement, which is used in code and zoning changes, a "Fair Housing Impact" statement, which would analyze the impact of the change on fair housing opportunities and the City's duty to affirmatively further fair housing in regards to all protected classes.

E. Barrier: Several residential development projects on government-owned land have failed to include or designate affordable housing opportunities for families with children, including the Plaza Saltillo tract development owned by Cap Metro, the City's Seaholm redevelopment, and the City's Green Water Treatment plant development.

Action steps: On City-owned land, adopt a requirement that at least 25% of the units will be affordable and that at least half of those units will be affordable for families with

children and leased or sold to families with children. Reach out to Cap Metro and other governmental entities to incorporate affordable housing opportunities for families with children on government-owned land undergoing redevelopment.

Sincerely,

Heather K. Way
512-632-1695
hway.austin@gmail.com

Attachment 2: Recommended modifications (excerpted from Jan. 9 2015 letter)

Modify language regarding inclusionary zoning on Section V, p. 4 #9

Current language: “The city is limited in its ability by state law to use inclusionary zoning as a tool to broaden housing choice. Texas state law limits municipalities’ tools to expand housing choice through a rent control statute and by preventing municipalities from enacting laws that set a maximum price for privately produced residential housing (sections 214.905 and 214.902). However, there are exceptions: maximum prices established as part of development incentive programs and for sale housing developed as part of a land bank are allowed.”

To adequately reflect the law, this language should be changed to state:

“The city is limited in its ability by state law to use inclusionary zoning as a tool to broaden housing choice. Texas state law limits municipalities’ tools to expand housing choice through a rent control statute and by preventing municipalities from enacting laws that set a maximum price for privately produced residential housing (sections 214.905 and 214.902). However, there are exceptions: maximum prices established as part of development incentive programs, housing in a homestead preservation district, and for sale housing developed as part of a land bank are allowed.”

Comment: The state law on rent control does not bar inclusionary zoning for rental housing. It says a city may enact rent control when an emergency exists due to a disaster and sets out the procedures for that, but it does not explicitly bar municipalities from enacting rent control in other situations. Home rule cities in Texas have broad authority to enact laws to advance the social welfare unless Texas Legislature or Texas Constitution explicitly bars their actions.

Sec. 214.902. RENT CONTROL. (a) The governing body of a municipality may, by ordinance, establish rent control if:

- (1) the governing body finds that a housing emergency exists due to a disaster as defined by Section 418.004, Government Code; and
- (2) the governor approves the ordinance.

(b) The governing body shall continue or discontinue rent control in the same manner that the governor continues or discontinues a state of disaster under Section 418.014, Government Code.

Increase priority to high, clarify confusing “lack of codes” language V p. 3 #8:
Change action related to this barrier to high priority.

Current language:

“Historical lack of city codes and age of and funding for parks in different neighborhoods may disproportionately impact protected classes, influence housing preferences and restrict access to opportunity.”

Revision: “The City’s historical lack of enforcement of city codes governing the maintenance of housing stock and age of and funding for parks in different neighborhoods disproportionately impacts protected classes, influences housing preferences, and restricts access to opportunities.”

Comment: The reference to “lack of city codes” in the 12/17 draft is confusing. The city has codes, but has failed to engage in proactive enforcement of the codes as they pertain to the health and safety conditions of rental units. We recommend that this provision specifically reference the city’s health and safety codes governing residential housing, and also reference the lack of enforcement of these codes.

Also, the city code department recently released data on the city’s rental registration program to target the most problematic properties, for multifamily complexes with repeated code violations. These properties are located in areas with high concentrations of racial and ethnic minorities.

Make code enforcement an action step V p. 3 #8:

Current language: “Collaborate with the Entrepreneurship and Community Development Clinic of the University of Texas Law School to identify funding mechanisms to support improvement of health and safety of housing stock within the city.”

Revision: (from the Clinic’s report on problem properties released in 2013)

“Adopt the following policies recommended by the Entrepreneurship and Community Development Clinic of the University of Texas School of Law in its report on: “Addressing Problem Properties: Legal and Policy Tools for a Safer Rundberg and Safer Austin” (Aug. 2013):

<http://www.utexas.edu/law/clinics/community/Executive%20Summary%20Rundberg%20Problem%20Properties%20Report.pdf>

- e. Continue work to build a stronger code enforcement program for dangerous multifamily properties, including comprehensive inspections of problem properties, aggressive prosecution of laws against egregious code violations, and creation of a remediation program to repair rental properties when owners fail to do so. Fund the program through code enforcement fines and rental registration and inspection fees.
- f. Create a citywide community prosecutor program, modeled on the City of Dallas program, where community prosecutors from the City Attorney’s office have offices within the community and focus on code compliance,

criminal nuisance issues, and other neighborhood quality of life issues utilizing community-focused strategies.

- g. Create a stronger property information system to inform planning, intervention, and research around problem properties, integrating data from the Code Compliance Department, the Police Department, and other city departments. The system should also allow the public access to track the status of code complaints and other information on problem properties in their neighborhoods.
- h. Create a Rehabilitation and Affordable Housing Preservation Program for Older Multifamily Properties. The City of Austin should create a program that provides low-interest financing to multifamily property owners with repair challenges in order to help the owners rehabilitate their properties, while tying the assistance to affordable housing preservation.”

Make action step, modify program beneficiary demographic data language

Current language: Continue to monitor the city’s affordable housing programs for geographic distribution of units produced and preserved under city programs.

Revision: “Gather demographic information of renters and homebuyers in the city’s incentive and development agreement programs, including race, ethnicity, familial status, and household size. Use this data to monitor the city’s affordable housing programs for geographic distribution of units produced and preserved under city programs. Continue to monitor the city’s other affordable housing programs for geographic distribution of units produced and preserved under city programs.”

Attachment 3: Required AI materials not yet provided (from Jan. 9 letter)

1. Timeline for completing activities, as noted above.
2. Data on disparities in access to community assets such as parks.
3. Data comparing how significantly recent policies on fund allocation are increasing the choices that people who have a disability, people who are elderly, families with children, people who are of color, and people who are members of other protected classes have in where they live; and
4. Demographic data analyzing fair housing choice of people participating in government-assisted housing programs within the city. To the extent the city does not currently collect this data, the AI should include an action step to begin collecting and analyzing it. To the extent that this data is already available from the city and from the Texas Department of Housing and Community Affairs, it should be analyzed in the AI.
5. HUD regulations and guidance provide that until this information is made available and the public is allowed and opportunity to review and comment upon it the City cannot adopt the AI.



February 9, 2015

City of Austin
Neighborhood Housing and Community
Development Office
P.O. Box 1088
Austin, Texas 78767

Comments on the Proposed Fair Housing Action Plan, Updated Matrix (February 2, 2015)

Dear NHCD:

Following please find Texas Appleseed's comments on the City of Austin's Fair Housing Action Plan Updated Matrix.

I. The City of Austin's action steps and the roles of "partners" are not clearly defined.

While we would read a "collaborate with partners to achieve goal" as a commitment to achieve the specific goal set out in the goals/activities column, it is unclear that this is the City's intended meaning. There are only three specific concrete actions in the measurable outcomes column: collecting data on its incentive programs, making administrative changes regarding look back periods in developments accepting City funds; and update and disseminate data on the location of units created through its incentive programs, all of which appear to be the responsibility of NHCD.

This is the City of Austin's AI, not the Neighborhood Housing and Community Development (NHCD) AI. The City of Austin is the recipient of federal funds, the City of Austin signs the certifications that are a prerequisite for eligibility for funds, and the City of Austin is responsible for conducting an Analysis of Impediments to Fair Housing Choice, taking appropriate actions to overcome the effects of identified impediments, and keeping records documenting those actions. As HUD's Fair Housing Planning Guide reminds grantees:

Although the grantee's AFFH obligation arises in connection with the receipt of Federal funding, its AFFH obligation is not restricted to the design and operation of HUD-

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funded programs at the State or local level. The AFFH obligation extends to all housing and housing-related activities in the grantee's jurisdictional area whether publicly or privately funded. (FHPG at 1-3)

It is well established, including in case law and in the State of Texas AI, that “housing-related activities” includes unequal provision of municipal services and facilities. (see, e.g. *Young v. Pierce*, 544 F.Supp. 1010 (E.D. Tex. 1982), 628 F.Supp. 1037 (E.D. Tex. 1985), 640 F.Supp. 1476 (E.D. Tex. 1986); 822 F.2d 1368, 1376 (5th Cir. 1987); and *Miller v. City of Dallas*, 2002 WL 230834 (N.D. Texas 2002)) Regardless of whether the City of Austin chooses to spend the housing and community development funds specifically on housing units, its obligation to affirmatively further fair housing is not circumscribed by that choice. The City of Austin is making commitments to carry out these action steps, and all departments and staff that are part of the City of Austin are committed to do.

II. Recommendations for more meaningful actions and outcomes:

1. CodeNEXT: Review of municipal codes and zoning and land use policies is a central and mandatory piece of an AI. While Austin is undergoing a code revision process, there is little evidence that fair housing considerations are being taken into account. We strongly recommend that the City hire an expert (in the fair housing implications of zoning and land use) to review the new code and other policies before there is any action to finalize or adopt the new code. The City should also submit this review of its code and action steps to address any issues found to HUD in order to complete its AI.
2. Outcomes for steps like “enact land bank policies” should include intermediate goals and timelines such as developing a policy, submitting proposed language to City Council, etc.
3. Enhancing information available to residents and city leaders about fair housing, including in forms accessible to LEP and persons with disabilities is an action that city staff can take. While collaborating with the non-governmental partners identified may be useful in specific ways, we are unclear on why actions such as translating materials into Spanish and posing additional information on the City’s website would not be staff responsibilities. The City should make a specific commitment to enhancing information within a specific timeframe.
4. Similarly, working with HUD to provide better information about the needs of persons with disabilities may benefit from collaboration with non-governmental partners, but is not dependent on it.
5. Code Compliance: This is a major issue with a disproportionate negative and dangerous impact on persons protected by the Fair Housing Act. The City of Austin must change its code enforcement priorities to focus on a) builder and landlord compliance with accessibility compliance; and b) health and safety deficiencies in rental property in the City of Austin, and its code enforcement process and procedures to effectively enforce these priorities. The fact that the

City has not already done so is inexcusable, particularly with respect to the condition of rental housing. The next balcony collapse may kill someone.

6. The City should provide for enhanced testing, and it should incorporate testing on source of income discrimination as well.
7. The City's goal of calibrating S.M.A.R.T. housing incentives to function in high opportunity areas is essential and important. Evaluating where transit goes and how lack of transit functions as an exclusionary barrier to certain areas is also a required part of the AI (*see letters from HUD to Houston and Texas*). Recipients of federal transit funds have independent obligations to comply with Title VI of the Civil Rights Act of 1964, coordination will help both the City and CapMetro stay in compliance with their civil rights obligations.
8. The action step on Homestead Preservation Districts is weak, particularly given the pace of gentrification in Austin. The City should commit to developing policies and programs, and to submitting them to City Council if necessary.
9. The only mention of access to infrastructure and facilities is public parks. While parks are an important community asset, they are not the only community asset the AI must address.
 - a. The action step even on parks is vague and weak. The City should identify where its current parks funding is going and reallocated it to address inequalities between neighborhoods.
 - b. Reviewing available information on public infrastructure and community assets should be High priority. The absence of this information is a glaring hole in the AI. The current draft AI includes a number of stakeholder comments identifying disparities in access to infrastructure and community assets, we suggest the City take these areas as a starting point. Again, this review does not require the participation of identified non-governmental partners to move forward.
 - c. Again, while collaborating with non-governmental partners on the content of fair housing training, or even to identify an outside trainer would be helpful, the City can commit to develop and implement fair housing training for its staff. The City's recognition that this training must be provided to departments including planning, development review, economic development, etc. is important, however, it is also critical that fair housing training be provided to members of City Council. Elected officials need to understand how their decisions impact and comply with fair housing and civil rights requirements. The fact that the last council passed an ordinance that violated the City's own Fair Housing Ordinance is evidence of a need for this training.
 - d. It is commendable that the City is going to engage city residents around the importance of racial, ethnic, and economic diversity. An explicit and ongoing commitment to these values has been shown to be an important component of preserving this kind of integration over time. We recommend that the City incorporate diversity around disability, religion,

and other protected class status, and that part of this engagement revolve around anti-NIMBYism.

- e. The obligation to affirmatively further fair housing must (not should) be incorporated into City policies, and the City must commit to do so. We find the proposed siloing of housing and community development in a separate proposed City Council committee disturbing.
- f. Apart from public safety, the other most frequently cited reason for dissatisfaction with current housing was "school quality." The AI does not address this in any way. This analysis must be included in the AI.

III. The Analysis is incomplete.

The AI is incomplete and, therefore, non-compliant. In addition to the already identified zoning and land use, municipal code, and public infrastructure and access to community assets reviews missing from the AI, it should also include information on the following:

- 1. Access to housing through public transportation.
- 2. Access to quality education.
- 3. Environmental and undesirable land use issues.
- 4. NIMBY opposition to the siting of affordable housing and strategies to identify the source of and address that opposition.

Thank you for your consideration,

Madison Sloan
Director, Disaster Recovery and
Fair Housing Project