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CERTIFIED MAIL – RETURN RECEIPT REQUESTED AND REGULAR MAIL

January 11, 2017

Mayor Sylvester Turner
Houston City Hall
901 Bagby Street
Houston, Texas 77002

SUBJECT: Letter Finding Noncompliance with Title VI of the Civil Rights Act of 1964
Case Number: 06-16-R001-6

Dear Mayor Turner:

This letter reports the findings of the investigation conducted by the U.S. Department of Housing and Urban Development ("the Department") under Title VI of the Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. §2000d, and its implementing regulation at 24 C.F.R. Part 1, concerning the City of Houston's ("the City") actions with respect to the housing development proposed for 2640 Fountain View ("Fountain View).

The Department initiated this investigation pursuant to 24 CFR § 1.7(c) based on information that the City's actions with respect to Fountain View may have had the purpose or effect of discriminating on the basis of race or national origin. The Department finds the City of Houston in noncompliance with Title VI and 24 C.F.R. §1.4, including §§ 1.4(b)(1), 1.4(b)(2), 1.4(b)(3) and 1.4(b)(6). Specifically, the Department finds that the City's refusal to issue a Resolution of No Objection ("Resolution") for Fountain View was motivated either in whole or in part by the race, color, or national origin of the likely tenants. More generally, the Department finds that the City's procedures for approving Low-Income Housing Tax Credit ("LIHTC") applications are influenced by racially motivated opposition to affordable housing and perpetuate segregation. The Department's findings of fact, conclusions of law, and remedies are set forth in this letter.

I. SUMMARY OF FINDINGS

The Department finds that the City's failure to issue a Resolution for Fountain View was based in part on racially motivated local opposition. The Houston Housing Authority ("HHA") proposed Fountain View, a 233-unit affordable housing development, in a predominately white, high-opportunity neighborhood near the City center. The organized and emotionally-charged local opposition to the project was unsupported by the facts. Moreover, the local opposition contrasted with the total lack of opposition for several larger market-rate properties recently

constructed nearby, including one next door to the Fountain View site. After several months of delay, Mayor Sylvester Turner ("Mayor") refused to put a Resolution for Fountain View on the Council agenda for a vote. The Mayor cited costs associated with Fountain View as the justification for this action. The Department finds this justification to be pretext for several reasons. First, no City funds were involved in the proposed project. Second, cost is not regularly considered for LIHTC Resolutions. Third, projects with similar costs have been approved by the City. Fourth, facts demonstrate that the Mayor's decision was based in part on racially motivated local opposition. Finally, the City has an established pattern of failing to site or support affordable housing projects in predominately white neighborhoods.

More generally, the facts show that the City maintains a system for approving LIHTC projects that is dependent on whether there is opposition from the residents of the neighborhood where the project will be located, and there are no checks or balances in place to avoid acquiescence with racially motivated opposition. City agencies do not consider LIHTC projects against objective metrics or conduct systematic assessments. The discretion accorded the Houston Community Development Department ("HCDD") in making recommendations about a project and the Mayor in putting Resolutions on the Council agenda largely nullifies the limited written criteria available for 9% projects and no written criteria are available for 4% projects. The facts show that Councilmembers vote to approve a project if it is supported by the Councilmember for the district in which the project is to be located. Councilmembers support a project in their district only if the local community supports it. The City maintains this system against a well-documented backdrop of racially motivated neighborhood opposition to affordable housing and a history of segregation. The City's complete deference to local opposition perpetuates segregation by deterring developers from proposing projects in areas where they are likely to face opposition.

The Department's findings are based on interviews and review of documents relating to the City's policies and practices governing approval of LIHTC Resolutions and the City's consideration of the Fountain View request. The Department requested and reviewed relevant documents, data and other information from the City. The Department also reviewed relevant publically available materials and interviewed Councilmembers and key City staff, including the current and former directors of the Housing and Community Development Department (HCDD), the Mayor's Chief Development Officer, and the Mayor. The Department also interviewed key current and former staff from HHA and local organizations familiar with affordable housing in the City. The Department appreciates the cooperation it received from the City during the investigation and looks forward to working with the City to resolve the findings in this letter.

II. FACTUAL FINDINGS

A. The City's denial of the Fountain View proposal was based in part on racially motivated opposition

In January 2016, HHA requested that the City provide a Resolution of No Objection for 4% LIHTCs for a 233-unit development at 2640 Fountain View Drive (Resolutions of No Objection from the City are required by the State for 4% LIHTC projects to be funded). HHA proposed that Fountain View include 20% of units at market rate, 70% of units available to families earning 60% or less of Area Median Income, and 10% of units available to families earning 30% or less of Area Median Income. Fountain View was to be funded with $14 million of 4% LIHTC credits, $12 million in tax-exempt bonds, $26 million of the HHA's allocation of CDBG Disaster

Recovery funds, and $6 million of the HHA's Capital Funds. As a result, no City funds were requested for the project.

The Fountain View proposal generated intense local opposition, HCDD never issued a recommendation for a Resolution, and on August 2, 2016 the Mayor announced that he would not put a Resolution for Fountain View on the Council agenda for a vote. That same week, the Mayor requested the resignation of the HHA Board Chair because of his pursuit of the Fountain View project. The Board Chair announced his resignation shortly thereafter. The Mayor also instructed the HHA Board not to approve the renewal of the HHA President's contract due to his support of the project.

The Fountain View proposal would have provided housing opportunities for minority residents in a largely white neighborhood. The census tract where the Fountain View project would have been located is 86.9% white, 3.0% black, and 10.5 % Hispanic of any race. The ZIP Code is 68.6% white, 7.5% black, and 36.3% Hispanic of any race. Tenants of the average LIHTC development in Houston are 57.9% black and 33.1% Hispanic. Further, persons on the Public Housing waitlist who would have qualified for the 30% of Area Median Income units in Fountain View – and whose inclusion and eligibility appeared to drive much of the local opposition - are 12.8% white, 78.1% black and 19.2% Hispanic.[1]

Neighborhood residents and local elected officials aggressively opposed the Fountain View proposal. Local parents' groups and neighborhood organizations mobilized to lobby the Mayor, Councilmembers, and other public officials. Hundreds of residents showed up to a public meeting hosted by the HHA on March 9, 2016. Residents organized a mass email campaign that flooded the inboxes of elected officials. Residents expressed objections to the project based on unit cost, increased traffic, a decrease in property values, increased crime in the neighborhood, and overcrowding at the local elementary school. Councilmember Greg Travis, the Councilmember for the district where the project would be located, publically opposed Fountain View and met with the Mayor and other Councilmembers about the project. Other local elected officials formally opposed the project, citing the same concerns as residents.

A significant number of written and oral comments about the project used coded language, which when considered in context, has been recognized by courts as expressing racial animus. A number of local decision-makers stated to the Department that they believed the local opposition to be shrouded in pretext and racially motivated. In interviews, the former Director of HCDD stated that he believed the local opposition to be racially motivated. The Mayor stated that school overcrowding and other local opposition arguments were "not persuasive." Contemporaneous newspaper editorials, opinion pieces, and local non-profits also surmised the opposition was racially motivated.

As part of its investigation, the Department reviewed emails from constituents to local representatives concerning Fountain View, the transcript of the public meeting on the project, and local news reports. Statements included the following:

- "Crime in the area will go up. Do you remember how bad the crime was after Katrina? Regardless of how charitable we would like to be; the reality is that in the lower income

[1] All figures in this paragraph define "white" as including both Hispanic and non-Hispanic whites and "black" is defined similarly. Census figures are from Census 2010, Summary File 1, table P5.

areas of Houston the crime is higher. Bringing them here will only bring down this area...."

- "I have seen low income housing developments...I have seen the trash that's around them. I've seen them move two to three families into one apartment because then they can be affordable"
- "...they have no right to come to our school"
- "...people come in here and they steal the tires off Suburbans and we have people wandering around here"
- "This project would cause a precipitous decline in real estate values and overload the schools."
- "Building a huge public housing project...at Westheimer and Fountainview which will crowd an already overcrowded good elementary school is a terrible project! Shame on you and city of Houston! Typical Waste of money that will only destroy a viable area."
- "It has been proven in the past what happens to the home values of neighborhoods that have seen the abuses of low income housing projects. There is so much other opportunity to develop these projects in the Houston area, and more rundown areas even that need and would appreciate improvement. Fountainview and Westheimer area is not one of these areas and we are all mystified as to why this area was even selected in the first place"
- "I am not the only person in our area that is extremely opposed to any vote in favor of extending tax credits for this project. This real estate should be developed in accordance with the existing neighborhood as another source of income for the city and HISD, to persons or companies that can pay the high property taxes and help contribute to, rather than bring down, this established neighborhood. Giving tax credits here just doesn't make sense!"

Local elected officials also used language reflecting unsupported stereotypes about occupants of affordable housing and their impact on the neighborhood, including:

- "the 2640 housing project [will] transform our neighborhoods"
- "This project will be of great detriment to the hard-working families in [the neighborhood]"
- "I firmly believe a project like this one....requires substantial input from those who would live with the ramifications on a day to day basis"
- "this is the first step of a larger HHA plan to build subsidized housing projects throughout our neighborhoods in West Houston"

The Department finds that the local opposition was at least in part racially motivated and was factually unfounded. First, concerns about crime and property values reflected unsubstantiated assumptions about the residents of affordable housing - in other words, the residents were stereotyped. Second, concerns about capacity at local schools were unsupported. While the local elementary school was oversubscribed, a new elementary school built to accommodate the area's growing student population was planned to open before Fountain View would be occupied and there are other nearby schools with excess capacity. Third, concerns about increased local traffic were not convincing as a traffic study conducted for the project showed only a negligible increase in traffic. The local Councilmember who opposed the project said he was not persuaded by the school, crime, and property values arguments, but felt the site was a not a good place for

families because of the street traffic. The investigation revealed the posted speed limit on Fountain View Drive is 30 mph, like any residential area, and the street is lined with apartment buildings (many of them luxury buildings) and immediately adjacent to residential neighborhoods.

By way of comparison, there was no local opposition to multiple market-rate multifamily developments recently constructed nearby that could be occupied by school age children, including some with more two and three-bedroom units than Fountain View. The housing development at 2626 Fountain View, built in 2015 next door to site for the proposed Fountain View project, has 281 units. Tate Tanglewood, built in 2015 and located less than a half a mile from the subject property, has 431 units. In addition, 1900 Yorktown, Grey House and Skyhouse River Oaks and were all built in either 2015 or 2016. The Department found no evidence that these market-rate properties faced analogous local opposition to that directed at Fountain View.

The City's stated justification for its actions is also unsupported by facts. The decision not to issue a Resolution of No Objection for Fountain View was made by the Mayor. In his contemporaneous public statement on the decision and in an interview conducted as part of this investigation, the Mayor stated that he did not support the project because of its high costs. The investigation found that LIHTC projects seeking Resolutions are not typically vetted by the City for issues like cost, especially when no City funds are involved. Projects seeking Resolutions from the City are not required to submit detailed cost information - the State requirements for notice to local jurisdictions do not include project costs (*see e.g.*, 2015 Texas Qualified Allocation Plan §11.8(b)(2)(C)(i)), the City's published form for 9% project applicants seeking a Resolution does not request information about project costs, and there is no City form for 4% projects seeking a Resolution. During investigative interviews, Councilmembers reported that they are not usually aware of the cost per unit when voting on Resolutions. Prior HCDD recommendations to Council for Resolutions include very few details about projects and do not regularly include cost, even for projects that require City funds. In fact, City review of projects generally is so minimal that the Mayor did not recall the City reviewing any other Resolutions during his tenure, although the City has issued at least ten LIHTC Resolutions since the Mayor took office.

In addition, the City has issued Resolutions for other LIHTC projects with comparable costs – including at least one project proposed by the HHA. Less than four months after the Mayor's Fountain View announcement in August, the Council issued a Resolution of No Objection for HHA's "Crosstimbers" project. The Crosstimbers project was estimated to cost $226,000 per unit, which is marginally lower than the per unit cost of $240,000 for Fountain View. In contrast to the Fountain View neighborhood, the racial composition of the census tract in which Crosstimbers is located is significantly more minority (22.4% white, 52.5% black, and 42.4% Hispanic).[2] The two sites also differ dramatically in access to opportunity. Crosstimbers is proposed for the Independence Heights neighborhood in a census tract with a poverty rate of 38.8% and a median family income of $23,115. According to Children at Risk, a non-profit organization that ranks the quality of public education in Houston, TX, the three schools available to children who would live in the Independence Heights development all have an "F" rating. By contrast, Fountain View was proposed for the Galleria neighborhood in a census tract

[2] Census 2010, Summary File 1, table P5. "White" is defined as including both Hispanic and non-Hispanic whites and "black" is defined similarly.

with a poverty rate of 7% and a median family income of $136,012. The three schools nearest the Fountain View development received ratings of "A", "A-", and "F" from Children at Risk.

In addition to these comparisons, the City's stated justification of cost also fails because HHA, the entity proposing the project, offered to lower costs for Fountain View but the City did not pursue the available options. Finally, HHA had been working with the City over the course of years to develop the Fountain View project, and the City was aware of the project costs. The HHA Board Chair offered to eliminate the developer's fees or obtain a second cost estimate. The Mayor simply told the HHA they should look for other sites. Also, the Councilmember in whose district the Project would have been located was unfamiliar with the rules governing developer's fees in the LIHTC program and said that he did not discuss potential cost reductions with the HHA. For all of these reasons, the Department concludes that costs were a pretext for the City's acquiescence to the racially-motivated opposition of the local community.

HUD finds that, at the time of the Fountain View decision, the Mayor and other City officials were aware of the history of de jure and de facto segregation in HHA's units (and other affordable housing in the City) and the importance of the Fountain View site for the desegregation efforts of the housing authority. Affordable housing in the City has long been concentrated in neighborhoods with high minority populations and almost no affordable housing options exist in predominately White neighborhoods. The City was aware of this - its most recent Analysis of Impediments to fair housing choice ("AI") noted that five out of 88 "super neighborhoods" in the City contain 71% of all subsidized housing. Further, 25 of the Houston HHA's 26 developments (96%) and 179 of the City's 185 active LIHTC developments for which data is available (97%) are located in majority-minority census tracts. In comparison, only 78% of Houston's renters live in these tracts. Considering tracts with minority concentrations of more than 80%, 19 of 26 (73%) HHA developments and 150 of 185 (81%) LIHTC developments are located in such tracts. In comparison, only 54% of Houston's renters live in these tracts.[3]

The City was also aware that HHA has had difficulty finding sites for new affordable housing that meet minimum regulatory standards and are not opposed by neighborhood residents. In 2012, HHA submitted preliminary proposals for five new housing projects to HUD for site approval. HUD rejected all five sites because they failed to meet regulatory standards. In early 2013 the HHA proposed a project on Pinemont Drive that was in an area identified by the state as "high opportunity" and met HUD's regulatory site standards. However, after the HHA expended significant resources further developing the proposal, strong neighborhood opposition was expressed and the seller backed out of the land sale. Mayor Turner, who was a state representative for the area at the time publically opposed the project and was quoted in The Houston Chronicle as stating "if you can't convince the homeowner associations and the civic clubs and the management district that [the affordable housing project] is right for the community, then I will not support it."

In 2014, the Department, reviewing an HHA proposed site for multifamily housing, explicitly addressed the affordable housing siting issue facing the City. The letter stated "the HHA's current housing portfolio is overwhelming in neighborhoods that contain high minority concentration, the HHA should make concerted efforts to develop housing in high opportunity neighborhoods that are not impacted." Also in 2014, a consultant hired by the City to examine

[3] City and Census 2010, Summary File 1. "Minority" is defined as other than non-Hispanic white.

the City's housing policies recommended that the City establish siting policies for LIHTC projects to encourage the construction of affordable housing outside "minority enclaves."

Finally, the City's most recent Analysis of Impediments to Fair Housing Choice ("AI") identified the Fountain View area as one of "several areas where publicly supported housing is not available." HHA's opportunity to build affordable housing at the Fountain View site was due to a unique set of circumstances not likely to be repeated. HHA's headquarters have long been located at 2640 Fountain View and HHA purchased the property out of foreclosure. The subject property includes two side by side buildings. After other proposed housing sites had failed to win approval, the HHA formulated a plan to rehabilitate the office space in one building for its headquarters and to construct mixed-income multifamily housing in the other building. The Fountain View proposal was a key component of HHA's plan to begin to remedy the legacy of segregation in its housing programs.

B. The City's policies, practices, and procedures for approving LIHTC projects effectuate local opposition motivated by discriminatory intent and perpetuate segregation

The City exercises substantial discretion in issuing Resolutions for LIHTC projects, thereby determining which affordable housing projects get built, where they get built, and who benefits. The City's system for issuing these Resolutions lacks objective criteria and is entirely dependent on the extent of local opposition. Given the history of residential segregation and opposition to affordable housing in Houston, this system has predictably segregative effects.

Resolutions play a significant role in determining what affordable housing gets built in the City and where. LIHTCs are federal tax credits intended to incentivize the construction and rehabilitation of low-income housing, and are responsible for nearly all new affordable housing constructed in the last decade. LIHTCs are awarded to developers of affordable housing by State agencies - 9% credits are awarded pursuant to a public competition and 4% credits are available to projects that have received tax exempt bonds and meet certain threshold criteria set by the State. In exchange for the credits, LIHTC properties must maintain a set percentage of rent-restricted units for 30 years. The State of Texas requires applicants for 4% LIHTCs to submit a "Resolution of No Objection" for the project from the governing body of the jurisdiction in which the project is to be located. The State of Texas awards competitive points to applicants for 9% LIHTCs that submit either a "Resolution of Support" or a "Resolution of No Objection" to the project.

The City routinely provides "Resolutions of No Objection" and "Resolutions of Support" (collectively "Resolutions") to LIHTC developers who intend to submit project applications to the State. In 2015 the City provided Resolutions to approximately 25 applicants (12 4% projects and 13 9% projects). While the City has not published or produced any written description of the process for issuing Resolutions, interviewees described the process generally as follows: a developer submits a request for a Resolution for a particular project to HCDD; HCDD decides whether to a recommend that Council issue a Resolution for the project; the Mayor determines whether to place HCDD's recommendation on the Council Agenda; the Council votes on the recommendation.

The specific procedures for 4% and 9% projects vary slightly, but the investigation found that the City's process for issuing all LIHTC Resolutions is dominated by discretion which is regularly exercised to accommodate local opposition regardless of apparent discriminatory motive, and in deference to individual Councilmembers.

For 4% projects, HCDD has no formalized procedures to request a Resolution of No Objection. HCDD does not require a standardized set of information from project applicants, and has no formalized criteria against which projects will be reviewed. The City produced no documentation in response to data requests about policies or criteria governing review of these projects and no person interviewed for this investigation identified criteria used to evaluate these projects to determine whether a recommendation would be made. Interviewees stated that, in practice, developers know that to obtain a Resolution they must obtain support from the Councilmember in whose district the project is located.

For 9% projects the City has published limited information about project review, but the process is still strongly influenced by local opinion. HCDD's "Request for Support Resolution from City of Houston for 9% Tax Credits" form requests specific information from 9% applicants including information about the developer's experience, the project's address, racial demographic and income information for the census tract, indicators for certain funding priorities, and whether the developer "has visited with the local Councilmember." The instructions to this form state that it is "required" that developers "[v]isit the district Councilmember and/or County Commissioner and present your proposal to him/her."

All interviewees stated that if HCDD makes a recommendation for a Resolution to Council, the Council vetting of projects is brief to nonexistent and that project details are not routinely considered. Councilmembers stated that they generally do not review information about a project or ask questions about a project at Committee or full Council meetings. Rather, all Councilmembers interviewed stated that generally the only criteria they considered in deciding how to vote on a Resolution was whether the Councilmember in whose district the project was located supported it.

All Councilmembers interviewed stated that they decided whether to support a project in their own district based on whether the neighborhood supported it. Councilmembers used different criteria for determining the level of community support or opposition - some made phone calls to community leaders and others waited to see if they heard any opposition from constituents. Multiple Councilmembers stated that their constituents were much more likely to support projects for the elderly than family projects and as result the Councilmembers said that they too were more likely to favor projects for the elderly.

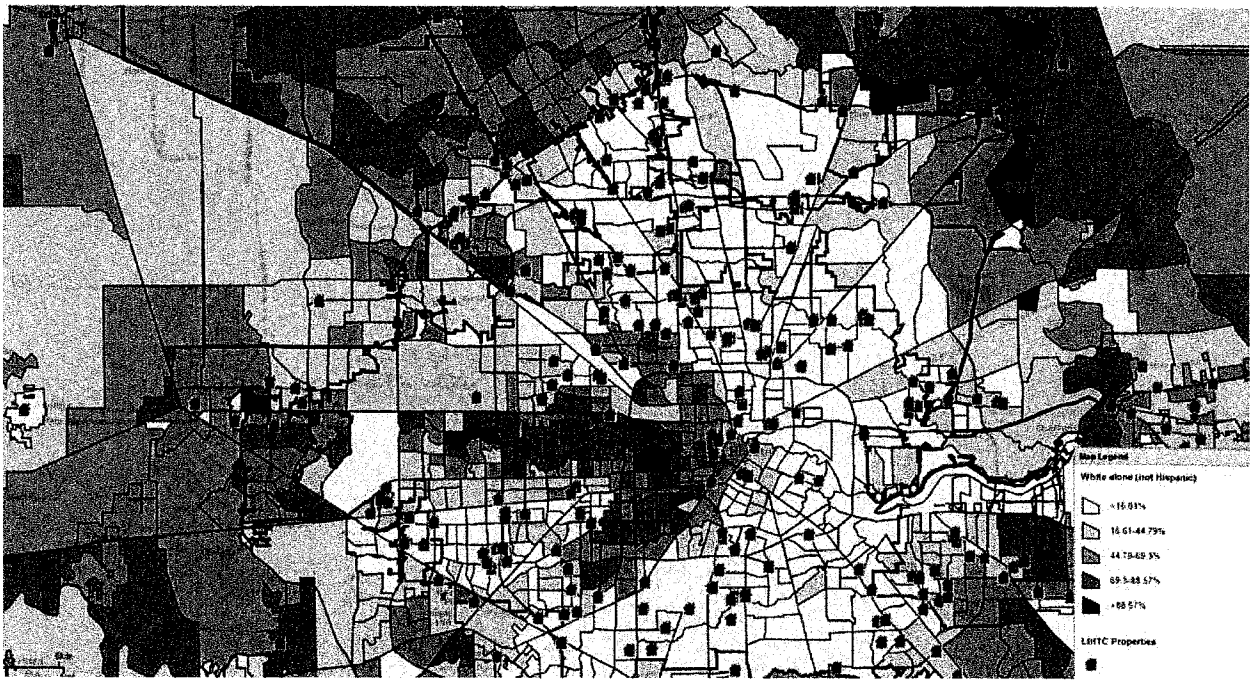
The City maintains these policies despite the well-documented history of racially motivated opposition to affordable housing, including LIHTC housing, proposed for predominately White neighborhoods in the City. In its most recent AI, the City identified local opposition as an impediment to fair housing, and noted that local opposition "reflect[ing] racial, ethnic, or other prejudices concealed under a legitimate concern" can "influence policy makers who might otherwise support housing development for protected classes" and "can keep affordable housing in certain neighborhoods." In fact, in 2014 the City eliminated a similar requirement for Councilmember approval for other types of affordable housing funding because it could be discriminatory.[4]

[4] "Previously, HCDD required the member of City Council in whose district an affordable housing development was proposed, to write a letter of support as part of the RFP response to HCDD for grant funding. This may have been an unintentional discriminatory practice because outspoken constituents against affordable housing could have influenced elected officials, which may have had negative effects on viable affordable housing proposals. HCDD no longer requires that responses to the RFP for Affordable Rental Housing include the District City Councilmember's approval letter. Instead, the latest multifamily RFP, issued in 2014, requested, but did not require, letters of support

In addition, the City has been repeatedly made aware that the City's practices with respect to LIHTC Resolutions facilitate local opposition and perpetuate segregation. Public commenters on the City's most recent AI recommended the City "develop selection criteria" for LIHTC developments to overcome the impediment posed by local opposition. Relatedly, in 2014 the State proposed a moratorium on LIHTC elderly developments in the Houston area because the State determined that the supply of elderly LIHTC units exceeded demand in the area. Also, as noted above, in 2014, a consultant hired by the City to examine the City's housing policies recommended the City establish siting policies for LIHTC projects to encourage the construction of affordable housing outside "minority enclaves."

LIHTC developments in the City have a tenant population that, on average, is significantly more black than the population as a whole. LIHTC tenants in Houston are 57.9% black, while the City as a whole is only 23.7% black. LIHTC tenants are 33.1% Hispanic, while the City as a whole is 43.8% Hispanic.[5] The below map shows that projects that have received LIHTC funding are overwhelmingly located in minority concentrated areas within the City.

Map of LIHTC Properties in Houston



Based on information provided by the City, during the period of 2012 to April 13, 2016, of 23 4% multifamily projects recommended by HCDD for a Resolution from the Council, 21 (91%) were majority minority census tracts, and neither of the remaining two are family housing. One, the Light Rail Lofts, is housing for homeless veterans and the other, the Retreat at Westlock, is a senior property. Retreat at Westlock was originally proposed as family housing but after encountering significant local opposition, was resubmitted as restricted housing for residents 62

from community and legislative representatives as part of the "Location Information" section of the selection criteria." The City of Houston, 2015 Analysis of Impediments, page 137.

[5] The data underlying the 2016 Texas Department of Housing and Community Affairs (TDHCA) Housing Sponsor Report and the 2010 Census respectively.

years of age and older. Nineteen of the 23 (83%) are located in census tracts that are 80% or more minority.

When considering 4% and 9% projects together, of the 81 projects the City provided information on that HCDD recommended for a Resolution, 69 (85%) are located in majority minority census tracts and 56 (69%) are located in census tracts that are 80% or more minority. Only 12 projects were proposed for census tracts with a White population of 50% or greater, and at least several of those are elderly designated. Finally, projects recommended for a Resolution in census tracts more white than the city as a whole failed at Council at five times the rate of projects proposed for census tracts less white than the city as a whole

The effects of the policy are even more stark considering the distribution by Council District. There are 11 Council Districts in Houston. Of the 68 LIHTC projects that were issued Resolutions between 2011 and 2014 located in the City limits, the three Districts with majority white populations - District C, G and E - contained two, one and five projects respectively, accounting for a total of just eight of the 68 projects (11%). By comparison, the only two Districts with majority black populations – Districts B and D - contained 12 and 22 proposed projects respectively (50% of total projects). The evidence indicates that the City's process for approving and siting LIHTC developments reinforces and perpetuates existing patterns of segregation.

III. ANALYSIS

The Department finds that the City is in violation of Title VI, which provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[6] First, the Department has determined that discrimination occurred under a program or activity that receives Federal financial assistance from the Department and is therefore subject to the prohibitions of Title VI and implementing regulations. In the case of assistance to local governments, "program or activity" is statutorily defined as the entity of local government that distributes assistance, and all of the operations of each department, agency, or other instrumentality of a local government to which the assistance is extended.[7] Here the City is a unit of local government that receives and distributes federal financial assistance from the Department.[8] The Mayor of the City signs certifications regarding the use of financial assistance from the Department. High level officials, including the Mayor, acting on behalf of the City participated in the discriminatory actions outlined below.

Among other things, HUD's Title VI regulation prohibits denying a person housing, providing housing in a different manner, or subjecting a person to segregation or separate treatment under the program or activity on the ground of race, color, or national origin.[9] The City's denial of a Resolution for Fountain View, as well as the City's policies, practices, and procedures for

[6] 42 U.S.C. § 2000d.

[7] 42 U.S. Code § 2000d.

[8] The City receives annual allocations of Community Development Block Grant, HOME Investment Partnerships Program, Housing Opportunities for Persons With AIDS, and Emergency Shelter Grants funds from the Department. In 2016, the City received $40,649,145 in these four grants. The City is also the recipient of Community Development Block Grant Disaster Recovery funds from the Department. The City received approximately $26 million in 2016.

[9] 24 C.F.R. § 1.4(b)(1). Note that 24 C.F.R. § 1.4 prohibits actions that have a discriminatory effect as well as those motivated by discriminatory intent. *Alexander v. Sandoval*, 532 U.S. 275 (2001).

issuing LIHTC Resolutions, perpetuate segregation by blocking and deterring affordable housing proposals in integrated neighborhoods. In adopting local opposition when denying the Fountain View project and considering other Resolutions, the City has violated Title VI, including through the utilization of "criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin."[10] The City also made selections with respect to "the site or location of housing accommodations...with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination" or "with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of [Title VI]."[11] Finally, the City failed to "take affirmative action to overcome the effects of prior discrimination."[12]

Where racial animus is a significant factor motivating residents who oppose the location of affordable housing in their neighborhood, a governmental entity may properly be held liable for a decision to cater to this 'will of the people.'[13] Discrimination occurs when "local officials are effectuating the discriminatory designs of private individuals."[14] Evidence of discriminatory motive includes statements that, while not overtly race-based, are "code words for racial animus."[15] In the context of opposition to affordable housing, such coded language can include statements based on unfounded stereotypes about the type of people who may occupy the housing.[16] Evidence of discriminatory motive also includes historical background, the sequence of events at issue, departures from standard procedure, legislative or administrative history, a past history of discriminatory or segregated conduct, and evidence of a substantial disparate impact on a protected group.[17] Here, the Department finds that City decision-makers effectuated the discriminatory motives of certain local residents in refusing to issue a Resolution of No Objection for the Fountain View project.

Local opposition was not supported by the facts and used coded language for racial animus. In the context of opposition to affordable housing, code words can include statements that "though not overtly race-based, [are] directed at a potential influx of poor, minority residents."[18] The meaning of code words is assessed "in light of the racial makeup of [the area] and the likely number of members of racial minorities that residents believed would have lived in [the proposed] affordable housing."[19] Such code words can include references to a neighborhood's "flavor and character," concerns about "increasing crime [and] decreasing community quality,"

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[10] 24 C.F.R. § 1.4(b)(2)(i).
[11] 24 C.F.R. § 1.4(b)(3).
[12] 24 C.F.R. § 1.4(b)(6)
[13] *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1226 (2d Cir. 1987). *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412 (2d Cir. N.Y. 1995) ("[A] plaintiff can establish a prima facie case by showing that animus against the protected group was a significant factor in the position taken by the municipal decision-makers themselves or by those to whom the decision-makers were knowingly responsive.").
[14] *Dailey v. Lawton*, 425 F.2d 1037, 1039 (10th Cir. 1970).
[15] *Mhany Mgmt. v. Cnty. of Nassau*, 819 F.3d 581, 609 (2d Cir. 2016).
[16] *Id.* at 608-09.
[17] See *Arlington Heights v. Metropolitan Hous. Redevelopment Corp.*, 429 U.S. 252 at 266-68 (1977) (evaluation of intentional discrimination claim under the Fourteenth Amendment).
[18] *Mhany Mgmt. v. Cnty. of Nassau*, 819 F.3d 581, 608 (2d Cir. 2016).
[19] *Id.* at 609.

or unsubstantiated concerns about "'overburdened and overcrowded' schools.'"[20] Opponents of the Fountain View project worried without substantiation that the affordable project would "transform," "bring down" and "destroy" the neighborhood, and that tenants would bring "crime," "trash," and overcrowding. To be sure, this opposition was unique to the affordable development – no opposition was expressed to several nearby market rate developments including one next door to Fountain View.

The investigation established that the Mayor's cited justification of project cost was pretextual[21] and was a substantial departure from normal procedure. The investigation established that project costs and other details are not regularly reviewed by City staff, Council, or the Mayor. While the Mayor contends that the City considers cost for HHA projects differently than other projects, the Department finds this not to be credible – particularly because the City approved the Independence Heights project at similar costs in a majority minority neighborhood. Furthermore, the Mayor and the Councilmember in whose district the project was to be located did not engage with HHA on offers to reduce costs and appeared unfamiliar with the facts. In addition, the City has approved projects with similar costs, including an HHA LIHTC property this year.

Finally, the Department concludes that the sequence of events at issue, the departures from standard procedure, the administrative history, the past history of segregated conduct, and evidence of a substantial disparate impact on a protected group militate in favor of a finding of discrimination here.[22] The City reversed past support for the Fountain View after significant opposition was expressed by residents. Unlike most projects that requested a Resolution, HCDD never made any recommendation on Fountain View's request for a Resolution, and the project was never given a hearing at Council. LIHTC projects that did receive Resolutions over the past several years are largely concentrated in minority neighborhoods, as are the HHA's public housing developments and other affordable housing in the City. And, given that residents of Fountain View were likely to be substantially more minority than the neighborhood where it was proposed, the decision to block the project perpetuated segregation in the City.

The Department also concludes that the City's policies, practices and procedures with respect to the issuance of Resolutions perpetuate segregation. In considering projects for Resolutions, the City does not rely on objective metrics or systematic review, but defers almost entirely to neighborhood opinion. Neither HCDD, the Mayor's office, nor Council regularly reviews the details of LIHTC proposals, and City staff were unable to articulate any standards against which projects were judged. Instead, interviewees stated that developers must garner the support of the local Councilmember to advance through the process to obtain a Resolution. Councilmembers reported deferring to local opinion with simply no inquiry into or consideration of whether that opinion is racially motivated – despite the prevalence of racially motivated opposition to affordable housing in the City.

This system blocks or deters developers from proposing LIHTC projects in predominantly white neighborhoods where they are likely to encounter opposition, and as a result, perpetuates and

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[20] *Id.* at 609-10.

[21] *Artisan/American Corp. v. City of Alvin*, 588 F.3d 291 (5th Cir. Tex. 2009) ("To survive summary judgment on its claim of discriminatory intent, Artisan/American must establish (1) a fact issue as to whether the City's stated reason for its decision-i.e., that the project violates the City's municipal ordinances-is pretextual and (2) a reasonable inference that race was a significant factor in the refusal").

[22] *See Arlington Heights v. Metropolitan Hous. Redevelopment Corp.*, 429 U.S. 252 at 266-68 (1977).

reinforces patterns of residential segregation in the City. As set forth above, the results of this policy are manifest – the vast majority of LIHTC projects issued Resolutions by the City are located in minority concentrated neighborhoods. The City is well aware of the results of deference to local opposition– as evidenced by the City's own identification of neighborhood opposition as an impediment to fair housing in the City, the City's elimination of a related policy for other affordable housing funding sources, and City's failure to respond to recommendations that the City establish a more systematic review of LIHTC proposals to avoid further segregative effects. The City has not put forward any adequate justification for its policies and there are numerous alternative policies that allow for legitimate – and nondiscriminatory – local concerns to be voiced without simply deferring a veto to some vocal neighborhood residents.

IV. REMEDIES AND OTHER CORRECTIVE ACTIONS

In order to remedy violations of Title VI outlined in this letter, the Department will require, among others, the following remedies and other corrective actions:

1. The City shall provide the Houston Housing Authority with the funding needed to supplement HHA's allocation of CDBG-DR funds to cover the cost of construction of the Fountain View project or another new construction or acquisition project in a low minority and high opportunity census tracts in the city of Houston.

2. The City shall develop a strategy to encourage development of affordable housing for low and very low income persons in areas of Houston that do not perpetuate segregation and without a high concentration of poverty, specifically in census tracts in the City with a poverty rate less than twenty percent (20%).

3. The City shall assess City laws, policies, and practices affecting the location, cost and availability of housing and develop and implement a strategy for revising or eliminating any policies or practices that hinder or create barriers to affordable housing or fair housing, in areas of Houston that do not perpetuate segregation and without a high concentration of poverty specifically in census tracts in the City with a poverty rate less than twenty percent (20%).

4. Working with the Houston Housing Authority, The City shall develop and implement a strategy to incentivize owners to accept Housing Choice Voucher holders within areas of Houston that do not perpetuate segregation and without a high concentration of poverty specifically in census tracts in the City with a poverty rate less than twenty percent (20%).

5. The City shall create adopt, and implement a site selection policy for vetting and reviewing requests for Resolutions of Support and Resolutions of No Objection for Low Income Housing Tax Credit projects which results in the development of affordable housing in areas of Houston that do not perpetuate segregation and without a high concentration of poverty specifically in census tracts in the City with a poverty rate less than twenty percent (20%).

6. The City shall submit to HUD for review and approval each proposed multifamily housing project that will utilize HUD funds for rehabilitation or new construction.

7. The City shall establish a City Fair Housing Commission that includes members of the Houston Housing Authority Board and Houston residents who reside in areas of low minority concentration and areas of high minority concentration and that Commission will work in conjunction with HUD to diminish housing segregation.

8. The City shall develop criteria for determining site selection of City funded multifamily housing that ensures that selections do not have a segregative effect.

V. CONCLUSION

Based on the Department's investigation and for the reasons set forth above, the Department concludes that the City is in non-compliance with Title VI and 24 C.F.R. part 1. The Department would like to resolve these matters as soon as possible. If a voluntary resolution cannot be obtained, HUD may initiate administrative proceedings or refer this matter to the United States Department of Justice for judicial enforcement.[23] A voluntary resolution would be addressed through a written Voluntary Compliance Agreement (VCA) with a clear timetable for implementation.[24]

If there are any questions or the Recipient wishes to voluntarily correct the violations, please contact Thurman G. Miles, Director, Fort Worth FHEO Center at 817-978-5870.

Sincerely,

Garry L. Sweeney, Director
Fort Worth Regional Office of
Fair Housing and Equal Opportunity
Region VI

cc: Deidra Norris Sullivan, Senior Assistant City Attorney
Tom McCasland, HCDD Director

[23] *See* 24 C.F.R. § 1.8.
[24] *See* 24 C.F.R. §§ 1.7(d)(1) and 8.56(j)(2).