



WORKING PARTNERSHIPS USA

January 19, 2017

City of San Jose Housing Department
c/o Adam Marcus (adam.marcus@sanjoseca.gov)
200 E. Santa Clara Street
San Jose, CA 95113

Re: Comments on Draft Analysis of Impediments to Fair Housing Choice

To Whom It May Concern:

Thank you for the opportunity to comment on San Jose's Draft Analysis of Impediments to Fair Housing Choice (Draft AI), released on October 14, 2016. We appreciate that the City of San Jose ("City") has extended the public process, has been receptive to our initial input, and is considering amending the AI to include such changes. However, after reviewing the Draft AI, we are disappointed that almost none of the recommended topics, impediments, and policy options that we recommended previously (see attachment) were included. While we continue to urge you to include all of the recommendations we previously submitted, we describe a few of the most important recommendations below.

We suggest that the City review HUD's recently published "AFFH Rule Guidebook" for guidance about what type of analysis an AI should have. While we understand that the AFFH Rule Guidebook describes entitlement jurisdictions' newly created obligation to create an "Assessment of Fair Housing" in lieu of an AI, much of the analysis is the same.¹

1. Ensure strong public participation.

While we appreciate that the City has added community meetings to the process for developing the AI, more action is needed to ensure robust public participation. The City should meet people where they are by soliciting feedback through multiple media and in multiple geographic locations throughout the City. The City should formulate questions that solicit meaningful input from laypeople. Finally, the City should actively partner with community-based organizations on outreach and facilitation of community meetings. Community-based organizations have deep roots in the communities, have the trust of

¹ See, AFFH Rule Guidebook, p. 5). The AFFH Rule Guidebook available at <https://www.hudexchange.info/resource/4866/affh-rule-guidebook/>.

residents, and are accustomed to creating empowering spaces for residents to engage in meaningful discussion.

2. Develop robust data.

In order to accurately and comprehensively understand and identify impediments to fair housing, it is critical to develop and analyze a robust set of data. Currently, the Draft AI is lacking data that would be particularly useful. Specifically, the AI should include data on the risk of displacement² (to understand which populations are experiencing displacement the most and thus be deprived of housing choice and access to key amenities and indicators of opportunity), Section 8 utilization and demographics (to understand whether there are barriers to taking advantage of this important program), Urban Village demographics, jobs-housing fit (by income and housing cost, to understand housing is available at prices that match wages)³, and access to transit and other assets and amenities for members of protected classes (a key indicator of fair housing).⁴ The City has been undergoing a study of the ARO, and this information should be included in the AI.

3. Clearly identify impediments, and the actions to overcome them.

In order to ensure transparency, accountability, and effective implementation, it is crucial that the AI clearly articulate the impediments to fair housing choice and the relevant actions to overcome them.⁵ In addition, HUD's 1996 Planning Guide urges jurisdictions to consider private and public sector impediments separately⁶, and numerous AIs make this distinction.⁷ Public sector issues include local building, occupancy, and health and safety codes; public policies and action such as zoning laws and policies; and planning, financing, and administrative actions.⁸ The City has been working to amend its ARO. The Draft AI should look at the ARO to analyze whether it is an impediment to fair housing choice, and what could be done to strengthen it.

Instead, the Draft AI excludes the most important section of the AI – the impediments themselves. The tables at the end of the document include a long list of recommendations, but it is impossible to know

² See UC Berkeley, Urban Displacement Project, available at www.urbandisplacement.org.

³ Chris Benner, UC Davis, Jobs Housing Fit in the Bay Area (PowerPoint), available at <http://bit.ly/2hb6SeZ>.

⁴ U.S. Department of Housing and Urban Development, Affirmatively Furthering Fair Housing Tool, available at <https://egis.hud.gov/affht/>.

⁵ See, for example, District of Columbia Analysis of Impediments to Fair Housing Choice 2006-2011 (Apr. 2012) 179-195, available at

<http://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/DC%20AI%202012%20-%20FINAL.pdf>; City of Naperville, Analysis of Impediments to Fair Housing Choice in the City of Naperville, Illinois 2007 (Dec. 2007) 64-78, available at http://www.planningcommunications.com/ai/naperville_ai_2007.pdf.

⁶ HUD, Fair Housing Planning Guide, Vol. 1 (Mar. 1996) 4-5 to 4-8, available at <http://fhic.nfhta.org/media/710>. This guide preceded HUD's Rule on Affirmatively Furthering Fair Housing, serving as the primary source of guidance for developing AIs.

⁷ See DC AI at 179-195; Naperville AI at 64-78.

⁸ HUD Fair Housing Planning Guide at 4-5 to 4-6.

which impediments the recommendations are meant to address and whether they are solutions to public or private sector barriers.

4. Include economic displacement as an impediment.

Displacement – resulting from evictions and increased rents spurred by gentrification – is a significant barrier to fair housing choice, particularly for low-income people of color.⁹ We have seen the displacement of low-income tenants from San Jose, through mass evictions, the loss of rent-controlled buildings, and the potential closure of mobile home parks. Concentrated growth in Urban Villages and Priority Development Areas will inevitably exacerbate displacement as new development attracts higher-income residents who want to live near transit and other amenities. Yet the Draft AI does not include any description or analysis of displacement and gentrification in San Jose generally or in the context of concentrated growth in places such as Urban Villages specifically.

Other AIs have identified displacement as an impediment to fair housing. For instance, Washington, D.C.'s 2006-2011 AI includes a long analysis of the problem and acknowledges “the potential for displacement that new development poses, particularly for lower-income residents.”¹⁰ Included in its “Impediment #4” is this description: “While wealthier Caucasians have been moving into neighborhoods that had been overwhelmingly African American, gentrification has accompanied this in-migration, leading to higher housing costs and displacement of a substantial percentage of residents with lower incomes, who ... are disproportionately African American.”¹¹

In addition, the City of Oakland included the “loss of naturally occurring affordable housing” as an impediment in its 2015 AI. It notes that this loss “has also led to significant displacement and gentrification” and cites the Urban Displacement Project’s findings on the risk of displacement in Oakland census tracts.¹² The City of San Jose should include a similar analysis.

5. Include effective anti-displacement policies as actions to overcome displacement.

One of the only places where displacement is mentioned in the Draft AI is in recommendation 1.10 – exploring the creation of an ordinance requiring relocation benefits for displaced tenants.¹³ However, it is important that actions to overcome the impediment of displacement go beyond relocation benefits, which do nothing to *prevent* displacement but merely to assist those already being displaced. More

⁹ For example, in San Mateo County, 25% of the population is Latino, but 49% of those evicted are Latino, and 2.5% of the population is African-American, but 21.4% of those evicted are African-American. Legal Aid Society of San Mateo County, Community Legal Services in East Palo Alto, and Anti-Eviction Mapping Project, San Mateo County Eviction Report 2016, p.8, available at www.legalaidsmc.org/eviction_report_2016.html.

¹⁰ DC AI at 98.

¹¹ Id. at 185.

¹² City of Oakland, Analysis of Impediments to Fair Housing Choice (Oct. 2015), p.83, available at <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/policy/oak056700.pdf>.

¹³ Draft AI at 94.

effective strategies include a stronger rent stabilization policy, a just cause for eviction policy, local preferences in affordable housing (consistent with the Fair Housing Act), and acquisition and preservation of “naturally occurring affordable housing,” to name a few.¹⁴

We look forward to continuing to work with the City to develop a thorough AI that can truly guide the City in promoting greater inclusion and access to opportunity for protected classes.

Thank you,

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¹⁴ For examples and descriptions of anti-displacement policies, see Association of Bay Area Governments, Bay Area Housing Policy Directory, available at <http://abag.ca.gov/planning/housing/housing-policies.html>; Causa Justa :: Just Cause, Development Without Displacement, pp.60-79, available at <http://cjc.org/wp-content/uploads/2015/11/development-without-displacement.pdf>; and UC Berkeley, Urban Displacement Project, Policy Tools, available at <http://www.urbandisplacement.org/policy-tools-2>.