



DENNIS J. HERRERA
City Attorney

August 25, 2016

Honorable Julian Castro, Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Helen R. Kanovsky, General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, D.C. 20410

Re: Neighborhood Preference Implementation in San Francisco

Dear Secretary Castro and Ms. Kanovsky:

The U.S. Department of Housing and Urban Development's decision to disapprove the City and County of San Francisco's Affirmative Fair Housing Marketing Plan (the "Plan") for the Willie B. Kennedy Apartments in San Francisco is wrong as a matter of law and public policy for several reasons. The underlying main purpose of San Francisco's Plan is to protect communities like the one that would be served by the Willie B. Kennedy Apartments from displacement as neighborhoods change and affordable housing is lost to rising costs. In particular, there are low-income residents in San Francisco who are systematically being forced out of the City through the rising cost of housing here. HUD's decision to disallow a neighborhood preference will destabilize those existing communities.

First, the Plan is designed to address specific needs where the Willie B. Kennedy Apartments project is located and is not drafted to exclude any protected groups. The Western Addition was once a thriving, predominantly African American community that experienced large-scale displacement in the 1960s due to HUD-backed policies of "urban renewal." It has tenaciously remained a neighborhood that is home to a rich diversity of residents. As Mayor Lee explained in his August 5, 2016 letter, lower income households have shrunk by almost 13%, while high income households grew by almost 35% in this area. Also, it is well known that housing cost increases in San Francisco have been among the highest and steepest in the country. The Plan is essential to help existing low-income families stay in their neighborhood and to maintain the existing diversity in the Western Addition, where the Willie B. Kennedy Apartments project is located. Without the Plan, the opportunity to remain in the neighborhood will not be possible for those low-income residents who are most vulnerable to displacement. Moreover, the Willie B. Kennedy Apartments project is targeted at seniors, and here the application of the Plan will help keep families together in the community, where they have their support network.

One of the primary goals the City seeks to achieve through the Plan is to mitigate adverse impacts of market rate development in San Francisco's high cost housing market by stabilizing and maintaining diverse neighborhoods and existing communities and the community-based safety net for them. The City's data show that low-income residents have been disproportionately impacted by rising market rents in their communities, and that the provision of a neighborhood preference applied to income-restricted affordable housing units will provide more opportunities for those facing displacement due to gentrification.

Letter to HUD Secretary and General Counsel
Page 2
August 25, 2016

Also, as stated in the Plan, developers, community advocates, residents and the City have a long history of collaboration on housing development in San Francisco. A neighborhood preference for current low income residents for a portion of new affordable housing opportunities acknowledges this collaboration and will help increase participation in this process. That collaboration will in turn help generate additional support for, and contribute to, the successful approval of more affordable housing development in San Francisco, which is critically needed.

Second, the City's Plan is consistent with the goals of the Fair Housing Act of 1968, a civil rights law written decades ago to protect minorities from discrimination. Here, the City is trying to stem displacement of existing residents and communities, many of whom are members of a protected class and have suffered years of discrimination. The Plan takes a tool that communities used in the past to keep protected minorities out and flips it on its head, to help residents remain in their neighborhoods instead. San Francisco's Plan addresses gentrification forces that were unknown when the Fair Housing Act was passed in 1968, and is not what Congress intended the Fair Housing Act to address—artificial barriers that functioned unfairly to exclude minorities from certain neighborhoods without a compelling public purpose justification.

In its letter dated August 3, 2016, HUD claimed that the City's Plan limits equal access to housing and perpetuates segregation. To the contrary, the Plan is intended to maintain diversity in neighborhoods such as the Western Addition; without the Plan, the opportunity for residents to remain in their own neighborhood will be out of reach for those who are most at risk of displacement. And HUD has long recognized another form of neighborhood preference for new affordable housing projects in San Francisco, including the certificates of preference for households in the Western Addition and Hunters Point neighborhoods that were displaced by the federally funded urban renewal projects in the 1960s. But those certificates of preference alone are far from sufficient to address the displacement of communities the City now faces.

Third, analysis in the City's statistical study has demonstrated that for the most part the Plan is not likely to result in a disparate impact. In his letter dated March 29, 2016, Olson Lee, Director of the Mayor's Office of Housing and Community Development ("MOHCD"), informed HUD of the results of a statistical disparate impact study that MOHCD conducted. Yet even where there may be a risk of disparate impact, courts have examined whether a "legitimate non-discriminatory reason for the discriminatory practice" exists. (*Betsey v. Turtle Creek Associates* (4th Cir. 1984) 736 F.2d 983, 988-89) The City has explained several public policy rationales for the Neighborhood Preference, including finding that affordable housing is a scarce resource with limited availability in San Francisco.

The City has a compelling need to provide relief for overcrowding and rent burdened households. It is in the public interest to help residents preserve their existing community-based safety nets such as access to schools, places of worship, and health care providers. As provided in the ordinance adopting the Plan, the Plan affords residents an opportunity to move into affordable, appropriately sized affordable units without leaving the community and those community-based safety nets. Indeed, the City's General Plan Priority Policies, which guide all land use policy in San Francisco, have long emphasized retaining neighborhood character, the cultural and economic diversity of its neighborhoods, and enhancement of the affordable housing supply. (San Francisco Planning Code §101.1(b)(2), (3).)

While in its August 3, 2016 letter rejecting the application of the City's Plan to the Willie B. Kennedy Apartments project, HUD says it hopes to be a partner with the City in addressing the affordable housing challenges the City faces and that it believes other anti-displacement strategies can be designed, HUD has not offered any alternatives to the one strategy the City has

Letter to HUD Secretary and General Counsel
Page 3
August 25, 2016

been able to identify and was poised to implement, based on the evidence, analysis and policies generally described above. And to our knowledge HUD has not taken a position to oppose a similar neighborhood preference program that New York City has been using for years. We understand that private parties recently challenged the New York City program and that New York City is seeking to have the court dismiss the lawsuit.

There are many reasons to support the Plan. The housing crisis in San Francisco, with its severe and unprecedented effect on low-income residents and communities, compels the City to find ways to staunch the loss of its low income residents, particularly as it affects entire communities. The Fair Housing Act and HUD's Civil Rights Related Program Requirements should not prevent this kind of effort to remedy the effects of escalating housing costs on San Francisco's communities, particularly a vulnerable population in a historically disadvantaged neighborhood currently experiencing acute displacement pressures.

We urge HUD to reconsider its response to the City's Plan for the Willie B. Kennedy Apartments. Because that project must begin accepting tenant applications in the near future, time is of the essence for HUD to reverse or revise its decision to allow neighborhood preference for this project.

Very truly yours,



DENNIS J. HERRERA
City Attorney

cc: Mayor Ed Lee
Members, Board of Supervisors
Olson Lee, Director of the Mayor's Office of Housing and Community Development
Gustavo Velasquez, Assistant Secretary for Fair Housing and Equal Opportunity, HUD