



Information Item

Date: February 11, 2013

To: Mayor and City Council
From: Andy Agle, Director of Housing and Economic Development
Subject: Analysis of Impediments to Housing Choice

Introduction

This report is to update City Council regarding final comments made to the Analysis of Impediments to Fair Housing Choice.

Background

The City Council conducted a public hearing on [November 27, 2012](#) to review and adopt the Analysis of Impediments to Fair Housing Choice. The Legal Aid Foundation of Los Angeles (LAFLA) submitted comments regarding a preliminary draft Analysis of Impediments (AI) on June 12, 2012, and resubmitted the same comments for Council's consideration at the November 27th City Council meeting. The City Council suggested that staff consider adding the closure of the Village Trailer Park as an impediment in the AI. This report addresses the integration of LAFLA comments into the AI and addresses the potential closure of the Village Trailer Park in relation to the AI.

Discussion

An Analysis of Impediments to Fair Housing Choice provides a review of public and private sector regulations, policies, procedures, practices and laws to determine the associated impact on access to fair housing choice.

Staff provided a draft of the AI to the LAFLA for review and comment before the formal public review period. The draft AI was prepared and released to the public for review and comment from August 22, 2012 to September 20, 2012. The Housing Commission conducted a public hearing as an additional forum for public comment. All the comments received, including those from LAFLA, have been considered. LAFLA

comments were integrated in the AI presented to Council with the exception of two comments. Attachment A specifies where LAFLA comments are integrated in the AI or, if not, the reason for not including them.

The AI identifies 15 public and private sector potential impediments to fair housing choice and actions to address these potential impediments. HUD defines impediments as:

- Any actions, omissions, or decisions taken because of race, color, ancestry, national origin, religion, sex, disability, marital status, familial status, or any other arbitrary factor which restricts housing choice or the availability of housing choices; or
- Any actions, omissions, or decisions which have the effect of restricting housing choices or the availability of housing choices on the basis of race, color, ancestry, national origin, religion, sex, disability, marital status, familial status, or any other arbitrary factor.

HUD defines fair housing as follows:

Fair housing is a condition in which individuals of similar income levels in the same housing market have like ranges of choice available to them regardless of race, color, ancestry, national origin, religion, sex, disability, marital status, familial status, or any other arbitrary factor.

HUD draws an important distinction between household income, housing affordability and fair housing. Economic factors that impact housing choice are not fair housing issues per se. Only when the relationship between household income combined with other factors - such as household type or race/ethnicity - create misconceptions and biases do they become a fair housing issue.

The potential closure of the Village Trailer Park (VTP), and housing lost as a result of the Ellis Act, were not included as impediments to fair housing in the AI as they do not meet the HUD defined criteria of a fair housing violation or of an impediment. Both definitions are predicated on protected class discrimination.

Prepared by: Barbara Collins, Housing Manager

[Attachment A](#): LAFLA Comments to the Analysis of Impediments to Housing Choice

MEMORANDUM

DATE: June 12, 2012

FROM: Denise A McGranahan

TO: Barbara Collins, Gary Rhoades, Lori Khadajian, Karen Warner & Associates

RE: LAFLA Comments to City of Santa Monica Analysis of Impediments to Fair Housing Choice, STAFF REVIEW DRAFT

I. Introduction

Although LAFLA was invited to participate in a Consultation workshop, due to a time conflict, we were unable to attend. We apologize for not being there and being able to provide the input that is set forth in this memorandum.

LAFLA has 2 ½ attorneys who focus on assisting low income Santa Monica residents. A great deal of our work involves assisting person's with disabilities in obtaining reasonable accommodations in housing, and in assisting rent controlled tenants with defending against opportunistic landlords' attempts to evict them due to the fact that they are paying rent that is well below market. Those tenants tend to be the most vulnerable: elderly and disabled persons, also a large percentage of our clientele.

Above information on LAFLA summarized on pg III-11

We also regularly refer our clients to the Santa Monica City Attorney's Consumer Unit, to the Santa Monica Rent Control Board, Building & Safety and other city agencies. Likewise, those agencies regularly refer clients to us for legal assistance. We have also filed several fair housing cases over the years. Those cases most frequently involved denials of request for reasonable accommodation. Two of those cases involved requests that landlords accept Section 8 vouchers as reasonable accommodations. We are regularly successful in negotiating reasonable accommodations for our clients.

We have obtained accommodations from the Santa Monica Housing Authority and private landlords. With respect to the SMHA, we have successfully obtained accommodations rescinding terminations, extending time to re-certify, and allowing for changes in program rules. As for private landlords, accommodations range from changing the due date of rent, permitting a caregiver, support animals, extended time to pay rent, accepting Section 8, not evicting for

breaches/nuisances related to mental disabilities, moving an elderly person to the first floor from a second floor apartment due to mobility problems.

We occasionally see other types of fair housing issues such as familial status discrimination and race discrimination. Those claims are much more difficult to prove from an evidentiary standpoint.

Above information incorporated as LAFLA's written comments on pgs III-16, 17

II. Public Sector Impediments Not Addressed In the Report:

A. Redevelopment

Assessing the impact of the defunding and dissolution of the Santa Monica Redevelopment Agency on fair housing choice in Santa Monica. In particular, the AI should address the impact of the Governor's new proposed budget which would transfer all of the cash assets previously held by RDA's, including affordable housing funds set aside for affordable housing development and preservation, to help cover the state's budget deficit. As the City Council Report prepared by Andy Agle, the Director of Housing and Economic Development for the February 28, 2012 meeting states, "the recent dissolution of redevelopment agencies in California has eliminated Santa Monica's primary revenue source for affordable housing."

For example, one of the expenditures which is vulnerable is the \$1,000,000 allocated to continue funding the City's Redevelopment Agency Rental Assistance Program, which is a rental subsidy program designed to help very low income adults who are 55 and older who are homeless or at risk of becoming homeless for non-payment of rent due to a financial hardship. Santa Monica provides redevelopment housing vouchers to approximately 70 families each year totaling \$1.2 million annually. That funding is in question.

We recommend that the AI address this and any other affordable housing-related former redevelopment projects which have been de-funded or for which funding may not be approved by the state.

Section added on pg IV-14, identified as potential impediment on pg V-3, action 6.3 added on pg V-8.

Palmer/Sixth Street Properties, L.P. v. City of Los Angeles, 175 Cal.App.4th 1396 (2009) ("Palmer")

Addressing the power of the City of Santa Monica to implement its Affordable Housing Production Program and the impact that that Palmer is having on the supply of affordable housing in the community. *Palmer* construed the Costa-Hawkins Rental Housing Act (Civ. Code §1954.50 et seq.) as potentially precluding the ability of jurisdictions to require affordable rental housing as part of inclusionary housing programs in California. *Palmer* held that the City of Los Angeles violated Costa-Hawkins when it required a developer either to include a

specified percentage of affordable units within his proposed housing project or pay an in-lieu fee. Jurisdictions like Santa Monica have good reason to anticipate Palmer-like attacks on their inclusionary programs. For example on May 24, 2012, in *California Building Industry Assoc. v. The City of San Jose* (Case No. 110CV167289) the Superior Court of Santa Clara County granted plaintiff's request for injunction and declared the city's inclusionary housing ordinance invalid.

As these programs have proven to be an effective tool to combat residential segregation, Palmer poses a significant impediment to affirmatively furthering fair housing in Santa Monica. For this reason, the Draft Plan should be revised and the AI should be updated to address this development.

The City has not been impacted by the Palmer decision as the AHPP offers developers multiple options.

C. Santa Monica Housing Authority Payment Standards are not Competitive with the Rental Market.

As is stated in the Staff Report dated April 14, 2009 recommending adoption of the SMHA's 5-Year Plan for Fiscal Years 2009-10 – 2013-14, "the Housing Authority struggles with maximizing utilization of the Section 8 Housing Choice Voucher Program and the Family Self-Sufficiency Program due to the lack of housing units affordable to the target income of the program participants. Market-rate rents in Santa Monica are consistently higher than program rents."

For the Voucher Program in Santa Monica, the Payment Standard has not been changed for 6 years. As is stated in the Annual PHA Plan PHA Fiscal Year 2009-10:

The rental market is extremely competitive and our vouchers must offer a fair return on the investment of property owners in Santa Monica. Otherwise participants will continue to largely not be able to locate housing in our city. Area rents are exceptionally high and HUD approved a 4th voucher payment standard in May 2006 as follows: \$1,009 for 0-bdrm, \$1,352 for 1-bdrm, \$1,843 for 2-bdrm, \$2,411 for 3-bdrm. A 5th payment standard application was submitted in March 2007, but rejected by HUD because of the SMHA 95% lease up rate. The 2007 application to HUD documented rental data on 3,172 rent controlled units in Santa Monica. The rent cost data clearly illustrated that the current payment standard is in the twenty first to twenty third percentiles and illuminates that without approval of an increased payment standard the lease up rate may decline. The current lease up rate is at 95%, which may be correlated to economic decline and a softening in the market.

With the exception of Community Corporation of Santa Monica, many landlords in areas of the City are less willing to accept the current payment standard, which

limits housing choices of Section 8 tenants, the majority of which are members of classes protected by fair housing law.

Tenants on the Section 8 program are permitted to pay up to 40 percent of their income to rent during the first year of a new tenancy, and, after that year, any percentage that the tenant can afford. Many Section 8 voucher tenants in Santa Monica end up paying the dollar for dollar difference above the payment standard in order to remain in their units because the SMHA has to approve “reasonable rents” under HUD regulations. Reasonable rents are often well above the payment standard. Tenants on fixed incomes, most often the elderly and disabled, cannot afford to pay the rent differential and are forced to live in less affluent, minority concentrated areas of the City. They do not, therefore, have access to the housing of their choice in the community.

This should be identified as a potential impediment with recommended actions to include applying to HUD for an increase in the payment standard even though it is unlikely that the SMHA’s application to HUD would be approved at this time.

Incorporated as LAFLA’s written comments on pg III-17. Identified as potential impediment on pg V-3, action 6.4 added on pg V-8.

D. The Impact of State-Wide Vacancy De-Control on the Cost of Rental Housing and Harassment of Tenants in Protected Classes.

At page 11-29 of the draft AI, under the heading Rental Housing Market, there is a discussion of the Rent Board’s annual report on the impact of Market-Rate Vacancy Increases. The report should include the 13th year report and statistics issued by the Rent Board through December 2011. The draft AI discusses the prior year report through December 31, 2010.

Updated on pg II-29

E. The Development of Moderate Income Affordable Housing.

The Analysis of Impediments should address whether the City’s continued production of “moderate income” units is a possible impediment to accessibility to housing for extremely low, very low and low income persons, many of whom are disabled and elderly. This is because Moderate Income rents exceed Market Rents for 0 and 1 bedroom units.

The City of Santa Monica has “an extensive history that prioritizes affordable housing to preserve and promote a diverse and sustainable community.” For example, Proposition R, passed in 1990, required that 30 percent of all new multi-family housing be affordable and Proposition I, passed in 1998, authorized the city to participate financially in creating housing equal to one-half of one percent of the housing stock. In February 2012, the City Council began studying its affordable housing priorities. This chart was compiled by the Housing Division and presented to the City Council on February 28, 2012.

Market Rents and Affordability		
Unit Type	Market Rent (2011)	Affordable Rent – Moderate Income
0-Bedroom	\$1,240	\$1,495
1-Bedroom	\$1,595	\$1,708
2-Bedroom	\$2,150	\$2,028
3-Bedroom	\$2,850	\$2,316

We are concerned that an affordable housing policy which provides financial incentives to developers to build moderate income housing limits access of families who are extremely low, very low, or low income, and who are very likely to be members of protected classes. Moderate income units are essentially market rate housing. Less than 1% of the households on the city's affordable housing wait list are moderate income. Ninety-five percent of the 3,370 applicants with a local preference have incomes which are considered extremely low or very low income. Thirty-three percent are disabled, 25 percent are senior and 10 percent are homeless. See City Council Report prepared by Andy Agle, the Director of Housing and Economic Development for the February 28, 2012 which discusses this and other accessibility issues.

Incorporated as LAFLA's written comments on pg III-17.

III. Private Sector Impediments Not Identified in Report.

A. Discrimination against Section 8 Voucher Holders.

The City of Santa Monica's AI should identify discrimination against Section 8 voucher holders as a potential impediment with a recommended action plan to include reviewing federal, state and local laws and recommend any new laws or modifications to the City's current laws to protect Section 8 voucher holders from discrimination.

Voucher recipients in Santa Monica have great difficulties finding landlords who will accept their vouchers. This is partially due to the payment standard but also due to discrimination against Section 8 which may often be veiled discrimination against minorities, the disabled and the elderly. As a result, not all recipients who receive Section 8 vouchers are able to utilize them. Most Section 8 tenants find units in buildings owned by the Community Corporation of Santa Monica. Otherwise, voucher holders in Santa Monica find very limited options in only a few neighborhoods in buildings owned by a short list of participating landlords. Choices are limited and the competition for each unit is extremely high. The landlords who regularly rent to Section 8 tenants are not model landlords when it comes to repairs and maintenance.

Discrimination against voucher holders affects fair housing choice because according to nationwide studies, Section 8 voucher holders face multi-level barriers of discrimination based on source of income, race, and ethnicity. A recent

HUD study suggests that cities that prohibit discrimination based on source of income have higher voucher utilization rates. An anti-discrimination law would also result in preserving or increasing diversity in Santa Monica. Residents assisted by the Santa Monica Housing Authority are extremely poor and likely to be elderly or disabled and in many cases, both elderly and disabled.

Federal law expressly permits states and local jurisdictions to compel landlords to participate. An increasing number of jurisdictions have enacted legislation to prohibit discrimination against Section 8 tenants. Although the California Fair Employment and Housing Act was amended in 2000 to include a provision which prohibits discrimination in housing on the basis of source of income. Unfortunately, Section 8 voucher-holders are not covered by the state law's definition of "source of income". *Sabi v. Sterling*, 183 Cal. App. 4th 916 (2010)

We recognize that an ordinance prohibiting discrimination against Section 8 voucher holders must be accompanied by obtaining a higher voucher payment standard from HUD. An owner cannot be accused of discrimination for refusing to accept a Section 8 voucher if the rent the applicant is offering to pay is below the amount the owner can reasonably demand based upon market rents.

Incorporated in LAFLA's written comments on pg III-17. Action 6.4 added on pg V-8.

B. The Closure of Village Trailer Park

The Draft Analysis of Impediments does not address the possible fair housing impact of the likely closure of the Village Trailer Park ("VTP"). We estimate that approximately 90 percent of the 48 remaining full-time VTP resident are elderly, disabled or both, and they may not have meaningful access to other affordable housing in Santa Monica.

The park owners, Village Trailer Park, LLC and Village Trailer Park, Inc., (hereinafter "Property Owner") have worked with the city for five years on a new 175 million dollar project containing 446 residential units, 8,650 square feet of office space, and 17,780 square feet of retail. The plan, which is presently before the Planning Commission and which is scheduled to be heard by the Rent Board and the City Council over the next two months, is to close the VTP, one of two remaining mobilehome parks in the city, and displace its residents to make way for the development.

The City of Santa Monica 2008-2014 Housing Element states the following Housing Program Objective:

3.b. Protection of Mobilehome Park Tenants Continue to assist tenants at the Mountain View Mobilehome Park and protect the existing tenants at the Village Trailer Park. In the event that closure of the Village Trailer Park is approved, provide assistance options for residents such as relocation to the proposed on-site rent controlled apartment buildings or condominiums, coach purchase

and replacement programs or relocation to the City's Mountain View mobilehome park. (Table ES-1, page 15)

One of the best options in the Relocation Plan—to relocate VTP residents to the city owned park, is now in question due to uncertainty of how new manufactured homes would be funded. The city had planned to use committed redevelopment funds to purchase these homes for VTP residents to rent, but the state may not permit the City to retain the funds to do so.

Even if the DA is not approved, the Property Owner has threatened to close the park and displace the residents. It is anticipated that if that occurs, the residents would receive only permanent relocation benefits under the City's Relocation Ordinance as follows:

2011 Relocation Fee		
(effective 1/12/2012)		
	Fee If Household Includes	Senior/Disabled/Minor *
Single	\$ 7,800	\$ 8,900
One Bedroom	\$ 12,050	\$ 13,850
Two or More Bedrooms	\$ 16,300	\$ 18,750

The majority of the remaining residents are too low income to afford to relocate within Santa Monica without Section 8, access to Mountain View, or to other affordable housing.

If the City approves the development, re-zones, and/or if VTP is closed, the effect is to potentially discriminate against the remaining VTP residents on the basis of disability and/ or age. The data in the TIR suggests that about 90 percent of the remaining VTP residents have disabilities and/or are seniors. See TIR at page 16. By contrast, 16 percent of the City's population is disabled, and 15 percent are seniors (age 65+). Thirty-eight percent of seniors in Santa Monica also have a disability. (Bureau of Census 2010).

The Fair Housing Act and California's FEHA are directed to the consequences of housing practices, not simply their purpose. It makes no difference whether the developer or the city have the intent to discriminate against elderly and/or disabled persons. See *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 209, 211 (1972) (internal citation omitted); *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977) (violation of Fair Housing Act made by "showing of discriminatory effect without a showing of discriminatory intent"); *U.S. v. Pelzer Realty Co.*, 484 F.2d 438, 443 (5th Cir. 1973) (defendants actions violate Fair Housing Act because his words had discriminatory effect even if he had no intent to discriminate).

Park residents may be able to state a *prima facie* claim of housing discrimination against Park Owner and/or the City if the outwardly neutral decisions of closing VTP, re-zoning and approving the DA has a significantly adverse or disproportionate impact on them as elderly and/or disabled persons, members of protected classes. See *Pfaff v. U.S. Dept't of Housing & Urban Dev.*, 88 F.3d 739,

745 (9th Cir. 1996); *Committee Concerning Community Improvement v. City of Modesto*, 583 F.3d. 690 (9th Cir. 2009) (finding of intentional discrimination is not required to establish a prima facie case of disparate impact).

The City and/or the Park Owner could rebut the case by stating that the decisions to close VTP and approve the DA serve a “legitimate government” or a “genuine business” interest. However, if there is a less discriminatory way to serve these business and/or governmental interests, and if the City and Park Owner do not adopt that alternative, the park residents may prevail in a fair housing case. See e.g. *Graoch Assocs. # 33, L.P. v. Louisville/Jefferson County Metro Human Rels. Comm'n*, 508 F.3d 366 (6th Cir. 2007); *Budnick v. Town of Carefree*, 518 F.3d 1109, 1114, 1118-19 (9th Cir. 2008); *Mont. Fair Hous., Inc. v. City of Bozeman*, 2012 U.S. Dist. LEXIS 25729 (2012); *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971).

Given that the closure, rezoning, and development of VTP would displace 48 residents, it should be identified as a potential impediment and, as a recommended action, the City should investigate the viability of any proposed alternate DA which might serve the legitimate government or business interest, but be less discriminatory in effect. Preserving a portion of the existing mobilehome park and avoiding the displacement of this very vulnerable elderly and disabled population would be a less discriminatory approach.

City Council has not taken action on VTP and it is not an action targeting persons of a protected class.

C. Long Wait Lists for Senior Housing.

The Draft AI does not mention that the 11 properties that offer senior housing have waitlists that are years’ long.

Comment added on pg II-36

D. Section 8 Tenants Residing in Deed Restricted Moderate Income Units at Risk for Displacement.

The Analysis of Impediments should address as a possible impediment the fact that there are tenants with Section 8 vouchers (many who are elderly and/or disabled and possibly members of other protected classes) residing in units that were constructed under the City’s Affordable Housing Production Program, which requires that a certain percentage of the units be constructed at specified levels of affordability. The affected tenants are Section 8 tenants living in “moderate” income units with maximum rents as high as \$1,495 for a single, \$1,708 for a one bedroom etc. This is way above the Section 8 payment standard for Santa Monica: \$1,009 for a single and \$1,352 for a one bedroom.

Because of the concern that so many frail elderly Section 8 tenants would be displaced if such a rent increase were imposed, LAFLA and City Staff approached the developer, NMS, to discuss rescinding the 90 day notices of rent

increase that had been served on 61 Section 8 tenants. Those notices purported to increase rents by approximately \$200-400 per month.

It is indisputable that very low income persons should not be renting moderate income units, but NMS originally allowed the Section 8 tenants to move into these units and they accepted the payment standard, the rent that the Santa Monica Housing Authority allowed. So, for years, they accepted several hundred dollars less per unit than they believe they could have gotten if they rented to moderate income tenants. NMS has 9 buildings and a number of other buildings in development in Santa Monica.

Since these buildings were constructed since 1979, they are not under rent control, but are subject to the city-wide “just cause” eviction charter provision, which was recently enacted to cover all multi-family buildings. The basic deed restrictions provide that when Section 8 tenants reside in the units, the rent is set pursuant to the Section 8 program. However, three properties have additional MERL deed restrictions (due to earthquake CDBG loans) which arguably protect approximately 30 of the tenants from receiving increases of this magnitude. Two of the MERL deeds specifically limit yearly rent increases to the amount permitted by rent control, which this year is 3.2 percent for 2011-2012.

For the other properties, Section 8 program rules apply. When a landlord seeks to increase the rent for a Section 8 tenant under HUD regulations, the housing authority is required to do a reasonable rent determination. There was a procedural defect in noticing because the owner did not seek approval from the city or the housing authority in advance of serving notices on the tenants.

Because these properties are not under rent control, according to HUD regulations, If the rent is ultimately determined to be reasonable based upon the comps., and it is too high for the tenant to pay, the tenant has to move or will face eviction for non-payment. (Section 8 tenants are permitted to pay up to 40 percent of their income the first year, but any percentage after that. So, if the payment standard is \$1,352, the tenant pays 30 percent of that plus anything over the payment standard. In this case, the difference will make the units unaffordable for most if not all of these tenants.) Some tenants are disabled and on Shelter plus Care which prohibits them from paying any more than 30 percent of their income to rent.

NMS agreed to rescind the notices and to make reasonable accommodation to the elderly and disabled tenants who would be at emotional or physical risk of moved, are going to be able to stay, but some others will be displaced.

We are concerned that there are other Section 8 tenants residing in moderate income units elsewhere in the city who are at risk for receiving notices of rent increase and being displaced.

Section 8 tenants in moderate-income deed restricted units are protected for rent increases by the Administrative Plan.

E. Admission Requirements of Community Corporation of Santa Monica

CCSM is the largest provider of affordable housing in the City of Santa Monica. It has about 80 properties and 1,500 apartments. We are concerned that CCSM's admissions policies may be too strict and may be an impediment to fair housing. If an applicant has had an unlawful detainer within the preceding five years, the person is *automatically denied admission*. Also, applicants need to show five years of rental history and no bankruptcies in the preceding five years. CCSM's admissions policies should be analyzed. They are available at <http://www.communitycorp.org/#!vstc2=forms-&-documents> (under Tenant Selection Criteria).

The "use of unlawful detainer records in rental housing admissions probably causes a "disparate impact" on the basis of race, ethnicity, gender, and other protected class status." *The Probable Disparate Impact of Unlawful Detainer Records*, Eric Dunn & Merf Ehman, Published in Washington State Bar News – July 2011
(Available at <http://landlordsolutionsinc.com/2012/02/rental-housings-elephant-in-the-room/>)

Not all UD records result from the tenant's wrongdoing, and even those that do are not always reasonably predictive of future performance. The uniform treatment of applicants with UD records therefore causes some prospective tenants to be denied housing for arbitrary or unjust reasons — that is, on grounds unrelated to their fitness as residential tenants. And in all likelihood, those unfairly turned down because of UD records are disproportionately women, people of color, families with children, and people with disabilities.

Id.

Persons in protected classes are more likely to be subject to eviction proceedings. Minority families are more likely to be renters than white families, making them potentially subject to eviction proceedings. In addition, minority families are also more likely to have zero or negative net worth, making them more vulnerable to eviction for non-payment of rent after a sudden loss of employment. Also, women are more likely to be single parents needing larger dwelling units. They are also more likely than men to complain about substandard housing, with the result of angering their landlords. Finally, domestic violence victims are also more likely to be women. Persons with disabilities may also need reasonable accommodations which can be the subject of unlawful detainers. *Id.*

Incorporated in LAFLA's written comments on pg III-17.