“Our goal is to create a beloved community and this will require a qualitative change in our souls as well as a quantitative change in our lives.”

Dr. Martin Luther King, Jr.

April 16, 2020

Sent via email to: hcddplanning@houstontx.gov

Attn: Planning and Grants Management
City of Houston Housing and Community Development Department
2100 Travis Street, 9th Floor
Houston, Texas 77002

Re: Comment on 2020 Analysis of Impediments to Fair Housing Choice and Consolidated Plan

Dear Director McCasland and HCDD Staff:

We appreciate the opportunity to comment on Houston’s 2020 Analysis of Impediments to Fair Housing Choice (“2020 AI”). For almost 15 years, Texas Housers and Texas Appleseed have worked with community and neighborhood leaders in Houston to realize the Fair Housing Act’s promise that every American can live in a safe and affordable home in the neighborhood of their choice, free from public and private discrimination. This promise is best understood through what the Texas Organizing Project (“TOP”) calls the Four Rights of Fair Housing. Every Houstonian has:

1. **The right to choose** where they live, in a decent and affordable home, regardless of their race, color, national origin, sex, religion, familial status, or whether they have a disability;

2. **The right to stay** in their neighborhood and enjoy improving conditions without fear of being involuntarily displaced by gentrification;
3. **The right to equal treatment** by their government and private institutions; and

4. **The right to have a say** in government policies that impact them, their homes, and their neighborhoods.

After years of persistent organizing, TOP secured the City of Houston’s commitment to guarantee The Four Rights for every resident. In its 2015 Analysis of Impediments to Fair Housing Choice, the City used the framework of the Four Rights to identify 14 impediments that infringed upon at least one of the rights and promised to carry out 65 action steps to remove them. Although the 2020 AI includes many of the 2015 AI’s impediments again, we are disappointed to see that the 2020 AI discards the Four Rights framework. Without these clear principles guiding the analysis of fair housing problems and the creation of action steps, the goals of draft 2020 AI fail to deliver housing justice.

Fifty years after the passage of the Fair Housing Act, Houston is still highly racially segregated; separate and unequal. Due to years of public and private discrimination, neighborhoods of color remain underserved by city infrastructure, the school system, banks, and business, are overwhelmed by toxic polluters, and are the hardest hit in natural disasters. On the other hand, Houston’s majority white neighborhoods remain the center of economic activity and job growth, have the highest rated schools, are mostly free from polluting facilities, and are the quickest to recover following flooding and big storms. Houston’s majority-white neighborhoods also don’t have affordable housing options, doing all they can to keep out low- and moderate-income renters and home-buyers who are disproportionately people of color.

While the city recognizes many of these problems in its AI, the document overlooks the depth of harm the city has caused and fails to develop meaningful and measurable action steps. The city also fails to give a complete accounting of its successes and failures in carrying out the action steps in the 2015 AI. Without major revisions demonstrating real commitment to fair housing choice and neighborhood equity, the City will break its promise to guarantee the Four Rights and fail to meet its obligation under the Fair Housing Act to affirmatively further fair housing (AFFH). In this comment, as with all our work in the region, we ask that the City of Houston fully acknowledge the damage done by racial segregation and take materially significant steps to finally address it.

We commend Houston for conducting an AI modeled on the Assessment of Fair Housing process set out in HUD’s 2015 AFFH Rule. This decision demonstrates Houston’s recognition that the harms of segregation and discrimination are not reflected only in housing patterns or access to affordable housing, but in all aspects of a person’s life. Where someone is born determines their access to opportunity, from educational and economic success to life expectancy. These disparities have been made unavoidably and horrifically clear by the COVID-19 pandemic. As with every crisis, the enduring legacy of racial segregation, including disproportionate exposure to air pollution and a mismatch between jobs and neighborhoods...
that requires people of color to travel to work, makes the scourge of COVID-19 fall many times harder on communities of color.¹

We offer this comment in the spirit of cooperation. We want to thank city staff for their recent efforts to gather citizen input during a global pandemic and economic crisis. However, the goals the City sets in this AI are severely lacking and fail to meet the challenges of this moment. We must also take issue with the AI’s characterization of the action steps in the Fair Housing Implementation Plan as “recommended actions.” The AI cannot merely offer recommendations.² In order to truthfully certify that it is eligible for federal housing and community development grants, the grantee is “required to submit a certification that it will affirmatively further fair housing, which means that it will:

- conduct an analysis to identify impediments to fair housing choice within the jurisdiction;
- take appropriate actions to overcome the effects of any impediments identified through that analysis; and
- maintain records reflecting the analysis and actions in this regard.”³

The Fair Housing Act and federal regulations require the City to actually commit to and “take appropriate actions”, not just make recommendations. Until Houston’s leaders and people truly commit to erasing systemic racism and addressing discrimination against protected classes, these patterns of injustice will remain. The people of Houston are ready to leave these ugly days behind.⁴

Our comments include three components: 1) this comment letter; 2) an audit of the 2015 AI’s action steps; and 3) an addendum on disaster recovery. In this letter, we analyze the AI’s impediments and action steps through the framework of the Four Rights and make recommendations for improvement. In the audit, we attempt to determine which 2015 AI’s action steps were completed and which were not; we ask the City to include a thorough and complete accounting of the 2015 action steps as is expected by the Fair Housing Planning Guide.⁵ In the addendum, we make recommendations to improve the city’s disaster recovery program.

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¹ Houston Health Department, “Coronavirus Disease 2019 (COVID-19) Updates,” April 9, 2020. Available at: https://houstonemergency.org/covid19


³ 24 CFR 570.601(a)(2) and 24 CFR 91.225(a)

⁴ We note that systemic racism is the model for how other protected classes have been excluded from opportunity and denied fair housing choice. People with disabilities, for example, are more likely to live in low-income neighborhoods, lack access to transit, and face NIMBY opposition to accessible housing in wealthier, whiter neighborhoods. Some protected classes have in fact been racialized, including Islam and Judaism.

I. THE 2020 AI MUST GUARANTEE HOUSTONIANS THE RIGHT TO CHOOSE

As stated in Houston’s 2015 AI, “all Houstonians have the right to live in a decent home in a neighborhood of their choice, free from discrimination.” The Right to Choose is the promise of mobility, integration, and meaningful choices about where to live, and it’s central to the Fair Housing Act’s objective of creating a truly integrated society. In spite of its strong commitment in 2015, the City of Houston offers only half-hearted support for the right of its citizens to have housing choice in the 2020 AI and offers weak action steps that will not lead to meaningful change. To truly demonstrate a commitment to housing choice and fully comply with the Fair Housing Act, the City must pledge to do the following in its AI.

1. Build 1,000 truly affordable housing rental and owner-occupied units for low-income families in high opportunity areas

The City of Houston must make a real commitment in the AI to build truly affordable housing in high opportunity areas to provide fair housing choice and combat the severe inequities caused by years of racial segregation. Although Action Step 5 in the AI commits to funding the construction of 1,500 affordable rental units, it does not specify where these units will be built or the income levels of those to whom they will be affordable. To truly provide housing choice to Houstonians and affirmatively further fair housing, the City should in the next five years: 1) fund the construction of at least 1,000 new rental and owner-occupied units with two to three bedrooms in high opportunity areas over the five-year grant cycle; 2) make sure at least 40% of these units are affordable to those making below 60% AMI; and 3) ensure that all rental units are accessible to those with Housing Choice Vouchers. All new units must be accessible to persons with disabilities and cannot exclude families with children. After years of allowing its housing policy to be dictated by the prejudiced NIMBYism of a small subset of mostly wealthy, white residents, it is past time for the City of Houston to commit to neighborliness and inclusivity.

Without decisive action, Houston is doomed to continue down a path it set for itself during the days of Jim Crow. In fact, recent HUD data shows that the already unacceptably high levels of racial and ethnic segregation in Houston are getting worse. HUD’s table of Racial/Ethnic Dissimilarity Trends shows that as of 2017, the Black/White segregation trend is at 71.71%, the highest level recorded in 30 years of data. 

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6 Units may not be restricted to seniors and must include units with multiple bedrooms that can accommodate families.
7 U.S. Department of Housing and Urban Development, “Table 3 - Racial and Ethnic Dissimilarity Trends,” September 2017. [The Dissimilarity Index is a tool for measuring racial segregation. Values are between 0 (no segregation) and 1 (complete segregation). HUD ranks levels less than 40% as low segregation, levels from 40% to 54% as moderate segregation, and levels at 55% and above as high segregation. In simple terms, the number means the percentage of a racial or ethnic group that would have to move from an area to for it to achieve the same racial distribution as the entire city. For a more in depth explanation see the 2020 AI at page 100]. Available at: https://files.hudexchange.info/resources/documents/AFFH-T-Data-Documentation-AFFHT0003a-September-2017.pdf.
Table 3 - Racial/Ethnic Dissimilarity Trends

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Figure 2: Segregation Map of City of Houston, 2020 AI at Page 110

Houston’s high level of racial segregation and history of systemic racism has caused extreme inequities in the distribution of resources, burdens, and opportunity between Houston’s majority white, non-Hispanic neighborhoods and neighborhoods of color. In 2017, the Reinvestment Fund’s Market Value Analysis (MVA) of Houston’s real estate market found that the strongest markets and high opportunity zones were in majority white, non-Hispanic neighborhoods. These strong markets/high opportunity zones likely succeed because they are set up for the success of their residents, while neighborhoods of color are...
not. Due to past and present systemic racism, Houston’s neighborhoods of color have lower performing schools,\(^8\) higher rates of poverty,\(^9\) less access to jobs,\(^10\) fewer banks and credit unions,\(^11\) and greater exposure to environmental health hazards.\(^12\) In 2019, Texas Housers found in its own analysis that 0% of Houston’s superfunds sites were located in richer, whiter, high opportunity areas while 50% of superfund sites were in historically minority neighborhoods.\(^13\) Further, 89% of municipal solid waste facilities and 79% of Brownfields were located outside of the high opportunity zone. We also found that 71% of schools in historically minority neighborhoods had Student Achievement Scores below 20. The city itself found that 80% of substandard open ditch drainage was located in Black and brown neighborhoods, almost half of which did not function. The City of Houston must make substantial investments and efforts in these neighborhoods to right these wrongs. But until that work is done, continuing to concentrate affordable housing in these areas and limiting housing choice for families in protected classes is unacceptable and contradicts the Fair Housing Act’s AFFH mandate.

**Affordable housing options within the high opportunity area are severely limited and should be expanded to afford greater opportunity to Houston’s children.** In its analysis, Texas Housers found that only 5% of Houston’s Low Income Housing Tax Credit properties are within the high opportunity zone.\(^14\) Even more troubling, many of the properties are limited to senior occupants leaving an even smaller percentage of units open to families with children. As the 2020 AI states, study after study shows that children that grow up in high opportunity areas with good schools and away from environmental hazards have higher incomes later in life,\(^15\) yet the ability of low-income Houstonians of color to access neighborhoods with these amenities is nearly nonexistent.

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\(^9\) Id. at 60.

\(^10\) Id. at 90.

\(^11\) Id. at 123.

\(^12\) Id. at 95.


\(^14\) Id.

The action steps that address segregation must commit to actually building affordable units in high opportunity areas. Although the City acknowledges in Impediment 6 that “segregated housing patterns based on race, ethnicity, and economic status” are an impediment to fair housing, the action steps to address the issue lack real measures of progress. The action steps that the 2020 AI claims directly address segregation are #14, completing a regional housing study, and #15, identifying areas where the cost of land is increasing and areas outside minority areas that would support affordable housing. Neither one of these actions guarantees that new units will be built in high opportunity areas. Action step number 12, making HCDD’s multifamily RFPs prioritize affordable home development

16 See Id. at 192-198. The action steps that directly address Impediment 6 are Number 14, completing a regional housing study, and Number 15, identifying areas where the cost of land is increasing and areas outside minority areas that would support affordable housing.
near transit options and in high opportunity areas, is also insufficient to accomplish the goal of desegregation.\[^{17}\] Although newly constructed affordable housing should have access to transit, it is a fallacy to suggest that increased transit access will have an impact on housing choice. If there are no affordable units in high-opportunity areas, there is no housing choice. To demonstrate a real commitment to integration and housing choice, HCDD, the Houston Housing Authority ("HHA"), and the City of Houston should pledge to build 1,000 affordable rental and owner-occupied units of housing in high opportunity areas over the next five years. At least 40\% of these units should be accessible to those making less than 60\% AMI and all rental units should be available to households with a housing choice voucher. All units should be accessible to people with disabilities and should not exclude families with children.

\[\text{Figure 4: Subsidized Housing and White, non-Hispanic Population, Texas Housers 2020}\]

\[^{17}\] Action step 12 is not listed in the 2020 AI as impacting segregation. See 2020 AI at 194.
2. Open up all of Houston’s neighborhoods to people with Housing Choice Vouchers by implementing Small Area Fair Market Rents and challenging the State of Texas’ unjust support of source of income discrimination.

In addition to a dearth of affordable housing units in high opportunity areas, another factor limiting housing choice is the inability of families with Housing Choice Vouchers to use them outside of low-income areas. As the map below shows, few voucher holders can find housing within the high opportunity zone. In fact, several census tracts in more affluent west Houston have absolutely no vouchers. This is for two reasons.

First, HHA should adopt Small Area Fair Market Rent ("SAFMR") payment standards for Houston, leaving more expensive zip codes out of reach for voucher holders. Under SAFMR, payment standards for housing choice vouchers are determined by the fair market rent of the zip code rather than the metro area as a whole. Although HHA has set payment standards for some more expensive high opportunity zip codes at up to 130% of Houston’s fair market rent,\(^\text{18}\) these levels still fall below the SAFMR zip code standards set by HUD.\(^\text{19}\) The


\(^{19}\)
Harris County Housing Authority (“HCHA”) has adopted SAFMR standards for its voucher program. HCHA has also raised payment standards for high opportunity zipcodes to 110% of the SAFMR to allow voucher holders greater housing choice. HHA should follow suit. Failure to adopt SAFMR payment standards also results in overpayments for rents in historically disinvested neighborhoods, which incentivizes developers to concentrate affordable housing in those neighborhoods because they can charge more than Fair Market Rent. While the 2020 AI documents that HHA voucher holders, who are mostly Black, are unable to obtain housing in more affluent areas, it commits to no action steps to more deeply diagnose or solve the problem.

Figure 6: HHA Housing Choice Vouchers and Poverty by Census Tract

In fact, the AI provides scant analysis of why housing choice for voucher holders is limited and makes no mention of SAFMR. Source of income discrimination is often a proxy for discrimination based on race and ethnicity, familial status, or presence of a disability. The

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21 2020 AI at 84-85.
City’s analysis should include whether there are disparities in voucher holder access to higher opportunity areas by protected class status. In the final draft, we ask that more analysis of this critical component of fair housing choice be done and that the HHA’s adoption of SAFMR payment standards be included as an action step.

The second reason that voucher holders’ housing choice is limited is the State of Texas’ law prohibiting jurisdictions from outlawing source of income discrimination. While several states have taken measures to protect voucher holders from discrimination, Texas is the only state that has taken such a radical measure to ensure that discrimination against voucher holder is legal. The 2020 AI mentions the state law in its survey of state laws and regulations posing fair housing issues, yet makes no commitment to solve the problem. The City of Houston should not tolerate discrimination of any form. It should stand up for voucher holders and take action, including working with state legislators to repeal the law allowing discrimination in the next session.

The city must also commit to passing a source of income protection ordinance for veterans using housing choice vouchers, as it has the power to do under state law. There are also other actions the City can take to decrease source of income discrimination, including banning requirements that tenants have income three times the amount of rent. This requirement is unrelated to a tenant’s ability to pay the rent, and it discriminates against persons with disabilities whose income consists of Social Security or Social Security Disability benefits, Veterans’ benefits. It also discriminates against families with children who have “unearned” income from child support payments.

3. **Combat housing discrimination against protected classes by funding fair housing testing and enforcement, and partnering with the Harris County District Attorney**

The 2020 AI must follow through with the commitment set forth in the 2015 AI and commit to funding fair housing testing throughout the next five year grant cycle. The 2020 AI lists housing discrimination as its first impediment and uncovers ample evidence that it continues to be a major problem. In a 2019 Community Needs Survey, 14% of participants said they experienced discrimination in the past five years and almost 25% said that they did not know if they had experienced discrimination. As the AI points out, it’s very likely that many of those who did not know if they were discriminated against did experience discrimination. For example, it is impossible for an applicant for housing to know if the landlord was non-responsive or lied about the availability of units because the applicant “sounded Black” on the phone. Survey participants’ top issues were renter issues, where a landlord either refused to rent to a participant or made stricter rules for the participant than others, or issues with realtors, where

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24 2020 AI at 145.
25 Id. at 160.
a realtor refused to give service to the participant or steered a participant to an undesirable neighborhood. All four of these examples cited by the participants are clear violations of the Fair Housing Act and must not be tolerated.

In its lending analysis, the 2020 AI also uncovers concerning evidence of lending discrimination. At all income levels, people of color were denied mortgage loans at higher rates than their white counterparts. Even at the highest income bracket, those earning more than 120% of the area median household income, denial rates were twice as high for Black or African American applicants (14%) than they were for White non-Hispanic applicants (7%). Even more alarming is that banks in the Houston area did not provide a reason for denial 46% of the time. These rates merit further investigation and testing.

While the 2020 AI is correct to propose that HCDD continue to operate the Fair Housing Hotline and continue its efforts to educate Houstonians about housing discrimination, such measures can only go so far. An appropriate additional step would be fair housing testing. Fair housing testing has a proven track record of uncovering discrimination and holding those responsible accountable. Recently, an undercover investigation in Long Island revealed that real estate agents treated people of color unequally 40% of the time. With so much evidence of discrimination present in the AI, HCDD and the City of Houston must prioritize fair housing testing along with its continuing education efforts. We realize that resources are limited, but the evidence already available makes this a necessary expense. Not only will testing likely uncover bad actors, it will deter future discrimination. When testing is conducted, we encourage HCDD and the organization conducting testing to release an annual report on the status of housing discrimination in the Houston area.

In addition to testing, we also suggest HCDD and the City of Houston pursue a collaboration with the Harris County District Attorney’s office to expand the enforcement of fair housing laws.

4. The City of Houston and Houston METRO should adopt LINK Houston’s Transit Equity Demand Index for creating more equitable transit

Taking into account the combination of housing and transportation costs, Houston recently became a less affordable city to live in than New York. According to Texas Monthly, Houstonians spend just shy of 50% of their income on these combined costs. The less a

26 Id. at 118.
27 Id. at 111.
Houstonian earns, the higher their cost-burden. Although the state’s approval process for
applications to the LIHTC program, the biggest vehicle for creating affordable housing, takes
into account proximity to public transit it does not factor in the frequency of routes or the time
it takes to travel to a job center.

The transit equity group LINK Houston has a metric called the TEDI (Transit Equity Demand
Index) that we believe HCDD should replace HCDD’s existing transit scoring system. The TEDI
combines 15 indicators of demographic, economic, and built-environment conditions to
identify areas in Houston where safe, affordable transportation is most needed to improve
quality-of-life. The index also indicates where existing transit performs adequately.

HCDD should use its institutional power to advocate that housing be built along high-speed,
easy access routes and prioritize land acquisition along METRO’s planned expansions for bus
rapid transit, light rail rapid transit, and park and ride expansion. What’s more HCDD should
courage METRO, as a regional institution, to participate more meaningfully and regularly in
planning activities, especially in light of its recently passed bond.

Additionally, HCDD should encourage the use of a soon to be revealed tool developed by LINK
Houston that allows seekers of affordable housing to understand the cost burden of transit
when making housing choices amongst its public services grantees.

5. The City of Houston must stop acceding to NIMBY pressure from white, wealthy
residents who do not want affordable housing in their neighborhoods based on
animus against persons in protected classes.

No event better defines Houston’s problem with racially-motivated, NIMBY resistance to
affordable housing construction in affluent, majority-white communities than the Fountain
View case. In 2017, HUD opened an investigation into the City of Houston for possible
discrimination based on race and national origin when Mayor Turner and the City Council
bowed to pressure from Galleria area residents and refused to issue a Resolution of No
Objection for the HHA’s Fountain View development, thereby killing the deal. On March 2,
2018, the City agreed to a 2-year voluntary compliance agreement (“VCA”) with HUD in which it
agreed to set new standards for site selection for Low Income Housing Tax Credit Properties
and Multifamily properties. These standards removed an individual council member’s ability
to veto a deal. Despite these improvements, this has not resulted in many more units of

31 See 2020 AI at 159-162.
Available at: https://www.hud.gov/sites/dfiles/Main/documents/VoluntaryComplianceAgreement.pdf See also:
MHANY Management, Inc. v. County of Nassau, 14-1634-cv(L) (2nd Cir. 2016) quoting United State v. Yonkers
Board of Education (Yonkers I), 837 F.2d 1181, 1224 (2nd Cir. 1987) (“The Supreme Court has long held, in a variety
of circumstances, that a governmental body may not escape liability under the Equal Protection Clause merely
because its discriminatory action was undertaken in response to the desires of a majority of its citizens.”); Palmore
v. Sidoti, 466 U.S. 429, 422 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly
or indirectly, give them effect.”)
affordable housing for families being built in high opportunity areas, nor has it mitigated prejudiced attitudes about affordable housing. In 2019, a proposed affordable development in Oak Forest was withdrawn in the face of neighborhood opposition.

Despite this clear evidence, the City of Houston’s action steps to address NIMBY resistance (Impediment 9) lack boldness. While HCDD promises to host more meetings with neighborhood groups in affluent areas to soften prejudices and dispel misconceptions about affordable housing, gone from the 2020 AI is a key action step the City committed to in 2015: to “Develop an Anti-NIMBYism policy and/or action statement.” It’s essential that the City of Houston and HCDD make a firm and public stance against NIMBY resistance to affordable housing. The City should craft and commit to a policy statement and memorialize it in a City Council resolution.

Texas Housers’ community partners have also suggested that neighborhoods that welcome affordable housing be given “Good Neighbor” recognition from the city, while those neighborhoods that shun their fellow Houstonians be labeled “Needs to Improve.”

6. **Expand the Houston Community Land Trust to high-opportunity areas**

The 2020 AI points to the Houston Community Land Trust (“HCLT”) as an avenue for “making affordable homeownership achievable for limited-income households in Houston.” But while 250 homes were promised through the New Home Development Program at the point of HCLT’s formation in 2018, only 35 have been delivered so far to the program – all of which are in Acres Homes, a historically black neighborhood. While it is important to preserve affordability in gentrifying areas like Acres Homes, the Land Trust must involve more properties distributed across neighborhoods in Houston, with an emphasis on those with high opportunity. We understand the city has committed three million dollars additional subsidy funding for the proposed Homebuyer Choice Program which will potentially add hundreds of homes into the HCLT. Given the unfulfilled promise of 250 homes in the first round of funding, we are eager to see this new promise fulfilled. The Land Trust is listed in Action Step #30. The current measure for success is “support HLB and HCLT.” We ask that you replace the milestone with stronger language: “(1) Deliver additional subsidy dollars to allow for at least 250 homes to be placed into the HCLT by December 1, 2020. (2) Deliver 250 homes in high-opportunity areas (specifically: homes in areas zoned to good or excellent schools as determined by Children At Risk) by December 1, 2020.” We understand these actions have already been discussed and we would like to see the city commit to them in the AI.

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33 See 2020 AI at 195. Impediments 18 and 19 are to “host and attend events to provide information about HCDD and housing programs” and “work to dispel misconceptions about assisted housing.”
34 City of Houston 2015 AI at 169. Available at: [http://houstontx.gov/housing/AI%20Final%207.31.2015%20reduced%20size.pdf](http://houstontx.gov/housing/AI%20Final%207.31.2015%20reduced%20size.pdf)
35 2020 AI at 25.
7. Ensure that criminal history or a history of eviction filings are not an absolute bar to housing

Blanket bans on potential tenants with any type of criminal record disproportionately affect people of color and persons in recovery, and are not justified by assertions that they increase public safety.\(^{36}\) Blanket ban policies are inconsistent in how they define criminal history. For example, some policies consider an arrest “criminal history” despite the fact that an arrest is not evidence that the arrestee has committed a crime; charges may be dropped post arrest. Even when charges are filed and a case goes to trial, persons who are acquitted do not have a “criminal history” in any widely held understanding of the term. Services that conduct background checks for landlords frequently include erroneous information, that the applicant has no opportunity to dispute. Instead, landlords must take into account information including the severity of the crime and the time period when it was committed. The city should consider an ordinance that prohibits blanket bans on tenants with criminal history and requires individualized assessments.

Similarly, the fact that a previous landlord filed an eviction case against a tenant is not an indication that the person will be a “bad” tenant. The tenant may have won the case or an appeal, or the case may have been dismissed without relief to the plaintiff. Landlords also use eviction filings to intimidate tenants who complain about conditions, to try to remove tenants for discriminatory reasons, or even pressure tenants for sex.\(^{37}\)

The city should work with courts to limit the dissemination of eviction information when:
- judgment was entered in favor of the tenant;
- the case was dismissed without relief granted to the landlord;
- the tenant was not in default and the suit was brought by the person who purchased the property following a foreclosure;
- the judgement is more than five years old; or,
- limiting the dissemination of information about the eviction is in the interest of justice.\(^{38}\)

Preventing an eviction filing, or even an actual eviction, from preventing Houstonians from finding housing in the future is particularly critical now, as the economic effects of COVID-19 may lead to a wave of evictions later this year when eviction moratoriums end. Households that were unable to pay rent because of job or income loss resulting from an unprecedented global pandemic should not be denied access to housing in the future, particularly when the pandemic has emphasized the critical importance of housing to health, including community health.


\(^{38}\) See S.B. No. 519, introduced by Senator Zaffirini in the 2019 legislative session.
II. THE 2020 AI MUST GUARANTEE HOUSTONIANS THE RIGHT TO STAY IN THEIR NEIGHBORHOODS WITHOUT BEING INVOLUNTARILY DISPLACED

All Houstonians should be able to stay in their neighborhood and enjoy improving conditions without fear of being involuntarily displaced by pressures related to gentrification. Many of Houston’s neighborhoods, especially those close to downtown are facing severe gentrification pressures leading to the displacement of long-time residents. In a recent survey of Third-Ward residents conducted by the Baker Institute of Public Policy at Rice University, nearly a fourth of those surveyed were worried about having to move in the next year. Of this group, nearly 70% said the rising rental were the reasons for concern and 46% cited increases in property taxes. We recommend the city commit to the following steps in the AI to ensure residents have the right to stay.

1. **Preserve, protect and ensure healthful conditions in affordable housing by identifying, securing, and renovating existing affordable units, especially those in danger of being lost**

We appreciate the City’s commitment in Action Step #4 to preserve existing affordable housing units. To conserve funding, we recommend that the City prioritize the preservation of properties that have access to amenities and in areas where property values are rising and free from environmental issues and high crime. All properties that receive city preservation dollars must be accessible for people with housing choice vouchers. We also recommend that HCDD adopt a comprehensive strategy to identify Low Income Housing Tax Credit Properties that are nearing the end of their affordability term so that efforts can be made to preserve them if necessary. Further, the City should consider implementing a city and tenant right-to-purchase program for subsidized properties similar to those that have been adopted in Denver and Washington D.C.

2. **Protect Vulnerable Renters from gentrification**

Long-time, low-income renters are often the first residents to be involuntarily displaced when their neighborhoods undergo gentrification. We strongly recommend that the City of Houston adopt strategies to protect tenants and their families from losing their homes and communities. The City of Houston should consider adopting many of the strategies outlined in the “The Texas Anti-Displacement Toolkit,” by Professor Heather Way of The University of Texas School of Law. To begin, HCDD should mandate that properties receiving its financial

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40 The University of Texas at Austin, “8 Tools for Combatting Displacement in Texas,” 2020. Available at: https://sites.utexas.edu/gentrificationproject/8-tools-for-combatting-displacement-in-texas

41 The University of Texas at Austin, “City and Tenant Right-to-Purchase Preservation Program,” 2020. Available at: https://sites.utexas.edu/gentrificationproject/8-tools-for-combatting-displacement-in-texas/city-and-tenant-right-to-purchase-preservation-program/

42 Heather Way, “Texas Anti-Displacement Toolkit,” 2019
support provide the following protections including: the right to organize; opportunity to cure alleged lease violations; no rent increases during the lease term; lease renewal protections; and caps on rent increases. The Toolkit also recommends that cities adopt anti-relation and anti-harassment protections, and expansions of legal protections for tenants facing eviction such as the right to counsel.

3. Support continued community home ownership by assisting homeowners secure clear title to their homes and homestead exemptions

Another key to preserving homeownership in low-income communities is to ensure that homeowners have access to the probate system and retain clear title to a family and community asset.

Heir property, title, and property tax issues disproportionately impact low-income households of color. Because low-income homeowners often pass down homes outside of the probate system, homeowners do not have clear title making it more difficult to secure homestead exemptions and reach the equity within their homes. This leaves low-income homeowners vulnerable to property tax delinquency and foreclosure, leading to the loss of homes and the potential hollowing out of neighborhoods. In gentrifying neighborhoods with exploding property valuations and property taxes, these difficulties are even more acute.

This issue also has major ramifications during a disaster event. Federal law requires homeowners to prove they own their home before disaster aid can be distributed. This obstacle posed major challenges to low-income homeowners during Hurricane Harvey and other disasters causing delayed assistance payments or none at all when it was most critical.

The AI should acknowledge and address this issue. We suggest HCDD and the City commit to increasing education efforts surrounding these heirship issues and partner with Lone Star Legal Aid, local law schools, and the Harris County Appraisal District to assist low-income Houstonian get clear title to their homes and secure all homestead exemptions to which they are entitled.

III. THE 2020 AI MUST GUARANTEE HISTORICALLY DISINVESTED NEIGHBORHOODS THE RIGHT TO EQUAL TREATMENT

The Fair Housing Act guarantees neighborhoods the right to equal treatment. Neighborhoods of color have been deprived of this basic right and subject to years of discriminatory treatment.

43 For more about the difficulties faced by low-income homeowners without clear title during a disaster, see: The University of Texas School of Law, “A HOME BUT NO WILL: Problems Faced by Low-Income Homeowners Lacking Access to Probate Systems in Texas,” April 28, 2014. Available at: https://law.utexas.edu/wp-content/uploads/sites/32/2016/08/no_will_homeowners-1.pdf
from the government and private institutions. The City of Houston and its citizens must do all they can to make sure that the right to equal treatment is realized.

1. **In the next 5 year grant cycle, commit at least 1 billion dollars of public funds to the Complete Communities Initiative over to address long-standing issues of neighborhood inequality**

Houston must make major investments in communities of color as reparations for the damage done by years of public and private discrimination and disinvestment. If appropriately funded, the Complete Communities Initiative led by Department of Neighborhoods could provide meaningful remedies to Houston’s pattern of annexing non-white neighborhoods and then neglecting to investing them. Currently, however, the program has not produced material results. Funding has come largely from private sources, and the strings attached are unclear. HCDD should ensure close collaboration and coordination with the Department of Neighborhoods to create efficiencies and maximize the program’s impact. The city should support the objectives identified through the community planning process by dipping into the general fund. If private monies continue to fund the initiative (in part or whole) conflicts of interest and terms should be widely publicized.

The city must also use its existing tax incentive programs, including tax abatements and Section 380 agreements, to create jobs and affordable housing in a meaningful and transparent way. A 2017 report by TOP, “Tax Breaks for What: A Community Report on the City of Houston’s Economic Development Deals”, found that 56% of projects did not create any jobs, and that incentives had funded only high-cost luxury housing units like InTown Homes and the Market Square Tower, where rents were more than $6,500 per month. The city should use its programs, which provide millions of dollars in public funding to private developers, to create well-paying jobs with worker protections and units that are genuinely affordable for low- and moderate-income Houstonians.

2. **End environmental injustice in Houston by mitigating existing hazards and prohibiting the expansion of new hazards near neighborhoods**

Impediment 11 in the AI is “Increased Health Hazard Exposure in Certain Neighborhoods.” In its analysis of the impediment, the City acknowledges the scope of Houston’s environmental justice problem, but fails to propose any action steps to deal with the problem. Without action steps to address these serious and well documented issues, the city cannot certify that it is affirmatively furthering fair housing or claim that it is doing right by its residents.
In its analysis of environmental disparities in Houston, the AI cites several experts and studies showing Houston's majority black and brown neighborhoods are closer to existing polluters and to newly constructed facilities than whiter neighborhoods. It acknowledges that these disparities have profound impacts on the health and prosperity of residents. It also brings up specific examples of injustice including the cancer cluster caused by a railwood wood preservation facility and Acres Homes recent efforts to fight off a proposal for a concrete batch plant. It notes that 90% of the mostly Hispanic residents in the Harrisburg/Manchester neighborhood live within one mile of a chemical facility, while only 9% of the mostly white residents in Bellaire face the same issue. Even more damning, it cites a study that found that the levels of toxicity in the air in Harrisburg/Manchester were 3 to 12 times higher than the air in neighborhoods in west Houston. This translated into a cancer risk for residents that is 22% higher than that of the Houston area as a whole.

Residents living in neighborhoods of color also face high health risks from pollution related diseases like COPD and asthma. In the 2019 Community Survey, 16.4% of survey respondents had experience or lived with someone impacted by diseases related to environmental
contamination. Maps from Houston State of Health show similar patterns: west Houston has relatively low rates of environmentally linked diseases such as COPD and asthma, while residents in north and east Houston face higher rates. Overall, Americans with incomes below the poverty line had a health burden 35% higher than the overall population, and Black Americans had a health burden 54% higher than the overall population. Despite its detailed analysis of environmental disparities in Houston, the AI proposes no action steps to remedy these injustices. Rather, action steps the AI claims to be related to Impediment 11 are Action Step #26, protecting households from future flood events, and Action Step #27, creating a stormwater master plan. While flood prevention is important, these Action Steps do nothing to address disparities in exposure to environmental hazards disproportionately faced by communities of color. This is unacceptable.

The City attempts to excuse its responsibility to address the issues, saying the following: “There are many limitations to address this impediment for HCDD and even the City of Houston. Promoting understanding for citizens about health hazards and the importance of these hazards is the main objective for the City for reducing this impediment.” However, the AI provides no explanation of what limitations stand in the City’s way or why “promoting understanding” of health hazards will have any meaningful impact. The analysis in the AI and the 2019 community survey clearly shows that residents living in environmental justice communities understand all too well that increased exposure to environmental hazards negatively impacts their health and the health of their families. In reality, the City is refusing to address a major impediment to fair housing, and thus violating its mandate to affirmatively further fair housing. Without the addition of meaningful action steps to address this issue, this AI is substantially incomplete.

We propose the following action steps. First, as part of Complete Communities investment efforts outlined above, the City of Houston should commit to fund mitigation of brownfields and other environmental hazards in neighborhoods of color. Second, it should oppose new industrial permits in EJ neighborhoods already overloaded with environmental hazards. Third, it should more regularly use AlertHouston to alert neighborhoods of chemical releases. Fourth, it should adopt more stringent siting standards for industrial facilities to ensure they are placed far from residential areas. Fifth, it should increase code enforcement efforts on existing facilities to limit disturbances to neighborhoods. We hope to see the City commit itself to addressing these actions in the final draft of the AI.

47 2020 AI at 189.
3. **Create a renters’ commission at the city level to protect renter’s rights**

Forty-seven percent of Houstonians are renters. That percentage will grow in the coming years. However, the voices and insights of renters, especially low to moderate income renters in Houston have been historically excluded. We recommend that through its joint housing study with Harris County and in the development of a citywide housing plan, that HCDD create and fund a renters’ commission led by renters making at or below 80% of AMI and representing every council district. The commission members should advise HCDD, the City Council, and the Mayor on issues and policies related to renters. The Commission should work with city staff to create a report and list of policy recommendations for the city to adopt to ensure the equitable treatment of renters throughout Houston.

4. **Address severe disparities in access to non-predatory financial services and change the name of Impediment 7 to “Lending Disparities”**

Our first recommendation in this section is to change the name of Impediment 7 to “Lending Disparities.” By titling Impediment 7, “Lack of Financial Education,” the AI wrongly places all the blame for lending disparities on people of color while leaving banks blameless. This is particularly troubling because, as stated above, the AI includes strong evidence of lending discrimination. At every income level, applicants of color had higher denial rates for mortgages than whites (see chart below). Forty-six percent of banks also failed to provide an explanation of why they denied applicants, in violation of rules and regulation. The 2008 foreclosure crisis, which had a devastating effect on homeownership and wealth creation for Americans of color, was driven by banks deliberately targeting communities of color for predatory subprime loans, including targeting borrowers of color for subprime loans when they qualified for prime loans.

Further, banks and credit unions do not serve majority black and brown neighborhoods in the same way that they serve white areas. As the AI notes, “[w]hen mapping the locations of bank and credit union branches in the Houston area, most are located in high income areas and also in commercial areas like the Galleria area and Downtown. Bank and credit unions located in Racially/Ethnically Concentrated Poverty areas were very few.” Despite this evidence, the AI fails to create an action step that would lead to further investigation of lending

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49 2020 AI at 121.
discrimination or lead to the construction of new bank branches. HCDD and the City should fund fair housing testing, including testing for lending discrimination.

**Figure 8: Conventional Mortgage Denial By Race in Houston MSA, 2020**

<table>
<thead>
<tr>
<th>Race</th>
<th>&lt;=80% AMFI (Low Income)</th>
<th>80%-120% AMFI (Average Income)</th>
<th>&gt;120% AMFI (High Income)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaskan Native or American Indian</td>
<td>40%</td>
<td>21%</td>
<td>9%</td>
</tr>
<tr>
<td>Asian</td>
<td>19%</td>
<td>11%</td>
<td>9%</td>
</tr>
<tr>
<td>Black or African American</td>
<td>33%</td>
<td>18%</td>
<td>14%</td>
</tr>
<tr>
<td>Hawaiian or Pacific Islander</td>
<td>24%</td>
<td>12%</td>
<td>12%</td>
</tr>
<tr>
<td>White</td>
<td>24%</td>
<td>11%</td>
<td>7%</td>
</tr>
<tr>
<td>Two or More Races</td>
<td>25%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Hispanic (Ethnicity)</td>
<td>33%</td>
<td>18%</td>
<td>11%</td>
</tr>
<tr>
<td>Non-Hispanic</td>
<td>21%</td>
<td>11%</td>
<td>8%</td>
</tr>
<tr>
<td>White Non-Hispanic</td>
<td>19%</td>
<td>10%</td>
<td>7%</td>
</tr>
</tbody>
</table>

Neighborhoods of color do not have equal access to banks compared to their whiter counterparts. Households without access to traditional banking and loan products are forced to use alternative financial services like non-bank check cashing, rent-to-own, “tax refund anticipation” loans, and payday and auto title loans, which have high fees and interest rates, lack consumer protections, and inhibit financial stability and wealth-building. Predatory lending institutions in Houston are concentrated in areas with concentrations of protected classes.
Though it is not mentioned in the AI, lending discrimination and access to credit also affect businesses in neighborhoods of color. A 2020 study by the Brookings Institution and Gallup found that while Black people are 12.7% of the U.S. population, they are only 4.3% of business owners. Only 1% of Black entrepreneurs were able to obtain loans in their first year of business, compared to 7% of white business owners, and Black entrepreneurs start their businesses with only one third the capital of white businesses.50

“In non-Black-majority neighborhoods, businesses with high Yelp ratings grew, on average, between 8.5% and 9% between 2016 and 2019, and poorly rated businesses grew significantly less (between 5% and 7.5%). In Black-majority neighborhoods, 7% growth was the norm for both highly rated and poorly rated businesses. Location in Black-majority neighborhoods eliminates the benefit of being a highly rated establishment.”

Supporting Black-owned businesses and other businesses owned by people of color in neighborhoods of color is critical to preserving jobs, access to commodities and services, neighborhood economic stability, and neighborhood character. We ask HCDD to analyze these issues further in the AI. While continuing to support financial education efforts is important, HCDD and the City must also hold banks and other lending institutions accountable for meeting their obligations under the Home Mortgage Disclosure Act, the CRA, and the Fair Housing Act.

5. Recognize that the duty to affirmatively further fair housing applies to all aspects of government in the the City of Houston, not just HCDD

The HUD Fair Housing Planning Guide (FHPG), which provides HUD’s guidance for AIs, states that “[a]lthough the grantee’s AFFH obligation arises in connection with the receipt of Federal funding, its AFFH obligation is not restricted to the design and operation of HUD-funded programs at the State or local level.” (FHPG at 1-3) Under the Entitlement CDBG program, and other HUD programs which provide housing and community development grants, the City of Houston itself is the grantee and program participant. However, the AI does not exhibit much evidence of interdepartmental cooperation or broad buy-in from elected officials. Only six of the recommendations identify another city department or the Mayor’s Office as primarily responsible for implementing a recommended action, or even name a specific city department that will take action in collaboration with HCDD.

For fair housing planning to work, the whole city must be involved in the effort. We urge HCDD to strengthen its partnerships with HHA (which commits to no action steps in this AI), Houston Metro, all City of Houston Departments, City Council members, and especially the Mayor in expanding Houston’s commitment to affirmatively further fair housing.

51 Brookings Institute, press release, February 18, 2020, Available at: https://www.brookings.edu/research/five-star-reviews-one-star-profits-the-devaluation-of-businesses-in-black-communities/ (“These financial realities are in contrast to our research showing that minority-owned businesses receive customer reviews that are just as high as nonminority-owned businesses”).
IV. THE 2020 AI MUST GUARANTEE HOUSTONIANS THE RIGHT TO HAVE A SAY

It is a bedrock American principle that our government is of, for, and by the people. All too often however, low-income people of color and other historically oppressed populations are left out of decision making processes that directly impact them, their families, and their neighborhoods. Impediment 12 recognizes that lingering disconnect between government and residents, but its related action steps don’t go far enough to bring low-income people into the places where decisions are made and, more important, the power to help make those decisions. We ask that the HCDD and the City of Houston commit to the following to ensure that Houstonians in protected classes have a say.

1. **Houston should immediately create a Community Development Advisory Board to provide citizen oversight of the HUD Consolidated Plan Budget, which includes CDBG, HOME, ESG, and HOPWA.**

To provide for broader and more appropriate citizen oversight of the HUD Consolidated Plan Budget, HCDD and the City of Houston should create a Community Development Advisory Board. We suggest that the tripartite board be made up of 15 members. Five members should live in and be elected by the residents of low-income census tracts where 20% or more of the population is at or below the poverty level. Five members should be appointed by City Council members representing districts where at least half of the census tracts qualify for CDBG assistance. Five members should be individuals representing organizations or groups with an interest or expertise in activities funded by the Consolidated Plan Budget and from groups representing protected classes. Members should serve five year terms.

The board should meet monthly and provide recommendations to the City Council regarding spending priorities and activities. It should also vote on whether to recommend the Consolidated Plan, the Analysis of Impediments to Fair Housing Choice, and the Annual Action Plan. The board will also be responsible for monitoring the implementation of these plans. Finally, the board should have a special fair housing and neighborhood rights subcommittee that meets quarterly with the mayor and city council to provide advice and counsel regarding equitable community development in Houston.

**Conclusion**

The right to choose, the right to stay, the right to equal treatment, and the right to have a say. We call on the City of Houston to recommit itself to these principles as it revises the AI and plans for the city’s future.

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52 See: 24 CFR 570.483(b)(1). A census tract is eligible for CDBG assistance if 51% of residents in the tract are low and moderate income persons. Alternatively, appointments could come from districts where 51% of residents are low and moderate income persons.
Thank you for the opportunity to comment. We offer our support to help the city carry out any of the recommendations listed above. We wish you and your family members good health during this trying time.

Sincerely,

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Addendum: Recommendations related to Disaster Relief

The Analysis of Impediments discusses the impact of slow, fractured disaster recovery programming in Houston, but does not make strong enough commitments to address the functioning of the single family home repair program.

From our work with the Harvey Forgotten Survivors Caucus and our organization’s experience with disaster recovery over the last ten years we have the following observations and recommendations.

- The city made pains to improve its community outreach around disaster recovery. Hosting joint planning sessions with local non-profits and a telephone town hall with AARP. We recommend that the city continue such efforts, ensuring that they are fully language accessible, provide childcare, and access for disabled Houstonians.

- The city should engage in disaster pre-planning similar to the activities undertaken by municipalities impacted by SB 289 of the 86th Texas Legislative Session. This pre-planning should include planning around increasing staff members needed to run a complicated program.

- The city should help LMI families comply with Chapter 19. (See: Costly and Unequal Burden)

- Whenever possible the city should enter single-family homes repaired or rebuilt into the Houston Community Land Trust to preserve affordability.

- Every two weeks participants in the program should receive an update about their program status in an easy to understand format in the language and medium of their choice (via text, email, letter). This update should include an estimated start date for their reconstruction/rebuild.

- The city should prioritize LMI families in the reimbursement program.

- The city should take pains to immediately stabilize all disaster survivors by mucking and gutting homes and remediating mold.

- The city should have an offline application, online-only or phone assisted application is cumbersome for many LMI disaster survivors.
- The city should keep disaster recovery resource centers open for the life of the recovery.

- The city should publish data on program progress monthly in a timely fashion. Several monthly reports have been uploaded late.

- The city should maintain a single caseworker/point of contact with a disaster recovery applicant for the life of the program.

- The city should seek out private funds or non-CDBG-DR funds to allow for the full rebuilding of homes to the previous number of bedrooms. Doing so helps to stabilize large, multi-generational families living under one roof who are frequently separated after their homes are made uninhabitable.