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Agenda Item: ID#15-488 & 15-489

Date: 6/11/15

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## Supplemental Information Packet

Agenda Related Item(s) – ID#15-488 and 15-489

### Contents of Supplement: Letter from Leadership Counsel Item(s)

Actions pertaining to the City of Fresno 2015-2016 Annual Action Plan; and  
Actions pertaining to the City of Fresno 2015-2019 Program Year Consolidated Plan:

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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A Tides Center Project

June 10, 2015

Fresno City Council  
2600 Fresno St.  
Fresno, CA 93721

Maria Cremer  
Director, Community Planning and Development Division  
U.S. Department of Housing & Urban Development  
San Francisco Regional office, Region IX  
One Sansome Street, Suite 1200  
San Francisco, CA 04104-4430

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**Re: Supplemental Comments on the City of Fresno's Draft 2015-2019 Consolidated Plan and Draft FY 2015-2016 Action Plan**

Dear Councilmembers:

We are writing to provide you with supplemental comments on the City of Fresno's Draft 2015-2019 Consolidated Plan (Draft Consolidated Plan) and Draft Fiscal Year 2015-2016 Action Plan (Draft Action Plan). We previously submitted comments to the City on its Draft Consolidated Plan on May 12, 2015 (May 12th Letter) and on its Draft Action Plan on June 2, 2015 (June 2nd Letter).<sup>1</sup>

These comments specifically address the City's duty to affirmatively further fair housing (AFFH) under civil rights and fair housing laws by taking steps to expand housing opportunity for all residents. Neither the Draft Consolidated Plan nor the Draft Action Plan satisfies the cities duty under these laws or, as detailed in our May 12th and June 2nd Letters, complies with baseline requirements set forth under the Code of Federal Regulations (CFR). As discussed in this letter, we believe that the City's failure to affirmatively further fair housing through the Draft Consolidated Plan and Action Plan is part of an ongoing pattern and practice by the City that disproportionately adversely impacts low-income residents of color. 42 U.S.C. §§ 2000d, 3601, *et seq*; Cal. Gov. Code § 11135. The City's ongoing failure to affirmatively further fair housing opportunity exposes the City to legal liability and potential litigation.

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<sup>1</sup>Comment letters previously submitted to the City and referenced in this letter are incorporated herein by reference.

Fresno City Council  
June 11, 2015  
Page 2

We ask that you decline to adopt the Draft Consolidated Plan and Draft Action Plan until they are revised to fully comply with all applicable laws and regulations as detailed in our letters.

**I. The City of Fresno's Legal Duty to Affirmatively Further Fair Housing**

Each jurisdiction that receives block grants funds is required to submit a certification satisfactory to the U.S. Department of Housing and Urban Development (HUD) that it will affirmatively further fair housing and will administer the grant in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. §§ 3601-3619), and implementing regulations. 24 CFR §§ 91.225(a)(1), 91.325, 570.303, 570.304(a)

To affirmatively further fair housing, the jurisdiction must take steps to assure that housing is fully available to all residents of the community regardless of race, national origin, gender, disability, or familial status (number and age of children). HUD, Fair Housing Planning Guide, Vol. 1, p. 5-4<sup>2</sup>. "Actions to AFFH should further policies of the Fair Housing Act by actively promoting wider housing opportunities for all persons while maintaining a nondiscriminatory environment in all aspects of public and private housing markets". HUD, Memorandum, "Affirmatively Furthering Fair Housing in the Community Development Block Grant Program", Feb. 9, 2007.<sup>3</sup> "[T]he central goal of the obligation to AFFH [is] to end housing discrimination and segregation." *U.S. ex rel Anti-Discrimination Center v. Westchester County*, 668 F. Supp.2d 548, 564.

**II. The City Must Immediately Initiate Preparation of its Analysis of Impediments**

Block grant recipients, such as Fresno, are required to submit a certification to HUD that it will affirmatively further fair housing by conducting an analysis to identify impediments to fair housing choice within the area (Analysis of Impediments or AI), taking appropriate actions to overcome the effects of any impediments identified, and maintaining records reflecting the analysis and actions in this regard. 24 CFR §§ 91.225(a), 570.601(a)(2). HUD guidelines recommend that jurisdictions conduct or update their Analysis of Impediments at least once every three to five years in accordance with the consolidated plan cycle. Fair Housing Planning Guide. 2-6, 2-7.

To our knowledge, the City last completed an AI in February 1996, *nearly 20 years ago*. If this is correct, the City has failed to update its AI for approximately three consolidated planning cycles and thus falsely certified its consolidated plans and annual action plans in violation of the False Claims Act for at least the past 15 years.

The City must immediately initiate preparation of a new Analysis of Impediments in full compliance with applicable laws and regulations.

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<sup>2</sup> Available at <http://www.hud.gov/offices/fheo/images/fhpg.pdf>

<sup>3</sup> Available at <http://portal.hud.gov/hudportal/documents/huddoc?id=fairhousing-cdbg.pdf>

III. **The Draft Consolidated Plan and Draft Action Plan Fail to Affirmatively Further Fair Housing by Expanding Housing Opportunity Outside of Areas of Racially and Ethnically Concentrated Poverty**

a. **Racially and Ethnically Concentrated Poverty in Fresno**

Draft Consolidated Plan Map 2 identifies census tracts in the City of Fresno characterized by minority concentration, defined as census tracts where the percentage of individuals of a particular racial or ethnic minority group is at least 20 percentage points higher than the city wide average. pp. 119-120. These census tracts are clustered in the Southwest, Southeast, and Central areas of the City. As discussed in the Draft Consolidated Plan, Asian, African American, Latino, and American Indian and Alaska Native Households in these neighborhoods and the City as a whole are disproportionately impacted by housing problems, including cost burden and severe cost burden, overcrowding, and substandard housing. See e.g., p. 119.

The same neighborhoods with disproportionate concentrations of people of color compared to the City as a whole also are also characterized by high levels of concentrated poverty and disproportionately lack access to basic infrastructure – including but not limited to sidewalks, functioning street lights, crosswalks, and traffic calming measures – essential services and amenities, including but not limited to safe and well-maintained park space, grocery stores, retail outlets, and medical services. See e.g., City of Fresno 2035 General Plan (General Plan), pp. 10:8, 11, 15, 18. These same neighborhoods also contain the three most and fifteen of the top twenty most burdened census tracts in the State of California by multiple environmental stressors according to the California Environmental Protection Agency’s California Communities Environmental Health Screening Tool, Version 2.0 (CalEnviroScreen).<sup>4</sup>

Despite the alarming pollution levels and vulnerability of the population in these neighborhoods, the City of Fresno’s principal economic development strategy promotes the location and expansion of industrial facilities in clusters located in and around low-income South Fresno neighborhoods, neighborhoods which already bear the burden of the majority of the City’s industrial and heavy commercial land uses. See e.g., City of Fresno General Plan, Figures 1-3 & 1-4; p. 2:12-14; General Plan Land Use and Circulation Map. The City’s actions to promote industrial development in and around low-income neighborhoods of color in South Fresno while also failing to expanding affordable housing opportunities in North Fresno neighborhoods and growth areas is evidence of a legally actionable pattern and practice to affirmatively further fair housing.

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<sup>4</sup> See California Communities Environmental Health Screening Tool Report, available at <http://oehha.ca.gov/ej/pdf/CES20FinalReportUpdateOct2014.pdf> and CalEPA’s Microsoft Excel spreadsheet showing raw data and calculated percentiles for CalEnviroScreen scores for individual census tracts available at <http://oehha.ca.gov/ej/ces2.html>

Fresno City Council

June 11, 2015

Page 4

The San Joaquin Valley Fair Housing and Equity Assessment (FHEA), prepared in concert with fourteen San Joaquin Valley cities, including the City of Fresno, in fulfillment of a grant from HUD, identifies the City of Fresno as one of the most highly segregated cities in the Central Valley, despite the great diversity of its populace. According to the FHEA, Fresno has the highest rate of Latino segregation among the 14 cities that participated in the study and among the greatest number of densely concentrated black neighborhoods in region p. 21.

Approximately 16% of the Black population, 15% of the Asian population, and 19.57% of the Hispanic population lives in neighborhoods of racially and ethnically concentrated poverty, compared to 4.53% of the white population. P. 28.

The City's General Plan recognizes that the lack of affordable housing opportunities outside of South Fresno neighborhoods has played a central role in the creation and perpetuation of racially and ethnically concentrated poverty and concentrated disadvantage in Fresno. The General Plan states, "Growth patterns have...exacerbated the concentration of poverty [in South and West Fresno neighborhoods]. Housing the northern part of the city caters to upper income families, while affordable housing investment has occurred in more distressed neighborhoods". pp. 10:11-12.

**b. Failure of the Draft Consolidated Plan and Draft Action Plan to AFFH**

Despite the City's recognition in its Draft Consolidated Plan, General Plan, and the FHEA of the significant segregation, concentrated poverty, and unequal neighborhood conditions that exist in Fresno and are linked to the lack of affordable housing opportunity in newer North Fresno neighborhoods, neither the Draft Consolidated Plan or the Draft Action Plan includes *any* meaningful discussion of factors contributing to this lack of housing opportunity in lower poverty neighborhoods or identifies or adopts strategies to expand affordable housing opportunity for all residents in accordance with AFFH requirements.

As explained in our May 12th Letter, the Draft Consolidated Plan fails to adopt concrete measures or goals to eliminate or mitigate public policy barriers to affordable housing in Fresno and fails to adopt strategies to expand housing choice in Fresno, particularly for low-income residents and residents of color who are disproportionately impacted by the lack of affordable housing throughout the City and in higher income and higher opportunity neighborhoods. pp. 11-12. Likewise, the Draft Action Plan includes no specific actions specifically oriented towards expanding housing opportunities in existing neighborhoods with higher incomes or in new growth areas which the City has designated for low-density development.

As stated in our May 12th and June 2nd Letters and other comment letters that we have submitted to the City, the City has designated significant swaths of the growth areas slated for development in the next twenty years entirely for low density or low and medium-density residential with no land reserved for higher density development that could support the creation of affordable housing for low-income residents. The low-density designations of growth areas



Fresno City Council

June 11, 2015

Page 5

reflect the existing low-density development patterns approved by the City in North Fresno neighborhoods which has shaped the City's patterns of racial and economic segregation. The City has also failed since 2010 to rezone approximately 700 acres of residential land to higher density residential land uses as required by Program 2.1.6A of its 2008-2013 Housing Element. Meanwhile, the City has continued to allocate HOME funds and collaborate with the Fresno Housing Authority and non-profit developers such as Habitat for Humanity to create additional low-income housing in South Fresno neighborhoods.

City Councilmember Oliver Baines, who represents some of the poorest neighborhoods in the City many of which are populated almost entirely by residents of color, submitted a letter to the City on the Draft Consolidated Plan dated March 20, 2015 which states, "My district can no longer be filled with only affordable housing units, but the entire community should have access to affordable housing in all areas of our city." His letter recommends that the City use HOME funds to create mixed-income housing, including market rate housing. The City's response to comments on the Consolidated Plan fails to meaningfully address and incorporate the Councilmember's comments which get at the heart of the City's AFFH requirements. This failure to respond is again evidence of a pattern and practice by the City to AFFH as required under civil rights and fair housing laws.

We reiterate below a few of the suggestions contained in our May 12th and June 2nd Letters on the Draft Consolidated Plan and Draft Action Plan respectively for actions the City can commit to taking to meet its requirement to affirmatively further fair housing opportunity. We have also previously provided these recommendations to the City in our comment letters on the City's Draft General Plan (resubmitted with our May 12th and June 2nd Letters) and several of the recommendations are contained in the FHEA prepared in collaboration with the City and 13 other Central Valley cities.

Programs and policies that the City commit to undertake in its consolidated plan and action plan to affirmatively further fair housing opportunity in Fresno beyond areas of racially and ethnically concentrated poverty include:

- Re-designate and rezone residential land in growth areas to higher residential densities to ensure the opportunity for development of housing affordable to low-income populations.
- Revise the currently pending Draft Development Code to allow multi-family housing by right or by Conditional Use Permit on properties zoned for single family use.
- Identify projects and apply for funding for mixed-income and low-income affordable housing development in existing higher income neighborhoods and in growth areas through private, state
- Work collaboratively with the Housing Authority of the City and County of Fresno (Fresno PHA) to identify sites for low-income and/or mixed income housing projects in higher income neighborhoods and growth areas, pursue funding for such projects, ensure proper zoning and expedite permitting processes to facilitate project development. Avoid

or limit continued creation of low-income housing projects without any mixed-income or mixed-use component in areas of highly concentrated poverty.

- Adopt an educational program to increase awareness among elected official, staff, property owners, business owners, and residents of the requirements to AFFH and the benefits of racially, ethnically, and economically integrated neighborhoods.
- Develop and adopt an inclusionary housing program with an in-lieu fee option for new development in existing city limits and in growth areas.
- Create a commercial linkage fee to help pay for the creation of affordable housing to meet the housing need of low-wage workers employed in new commercial developments.

Our May 12 and June 2nd Letters also describe a variety of actions the City can take to improve access to essential infrastructure, services, and amenities and environmental health in neighborhoods of racially and ethnically concentrated poverty in Fresno. The City must commit to and implement such measures as part of its duty to AFFH.

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In light of the issues raised in this letter, we ask that you decline to adopt the Draft 2015-2019 Consolidated Plan and Draft FY 2015-2016 Action Plan until the plans incorporate specific and measurable actions that the City will take to affirmatively further fair housing and are revised to comply with all other applicable laws and regulations. We also request to meet with you so that we can discuss our concerns in person and how the City can meet its requirements under fair housing and civil rights laws.

Sincerely,



Ashley Werner  
Attorney

Cc: Doug Sloan, City Attorney