



GREATER NEW ORLEANS
**FAIR HOUSING
ACTION CENTER**



LAWYERS' COMMITTEE FOR
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STRATEGIES TO AFFIRMATIVELY FURTHER FAIR HOUSING

**PROPOSALS FOR THE CITY OF NEW ORLEANS
COMPREHENSIVE ZONING ORDINANCE (CZO)
AND BEYOND**



STRATEGIES TO AFFIRMATIVELY FURTHER FAIR HOUSING

Proposals for the City of New Orleans
Comprehensive Zoning Ordinance (CZO) and Beyond

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Executive Summary

The City Planning Commission (CPC) and City Council have a unique opportunity to ensure greater equity for New Orleans residents and a more livable and competitive city through the re-drafting of the Comprehensive Zoning Ordinance (CZO). This handbook describes a set of innovative strategies that, if implemented, would ensure a more just, economically integrated, and livable New Orleans. Furthermore, the adoption of such land use policies would help ensure that the City of New Orleans complies with the Fair Housing Act's requirement to "affirmatively further fair housing."

The Fair Housing Act requires, among other things, that jurisdictions receiving federal housing money, including Community Development Block Grant funds, take steps to affirmatively further fair housing. This duty requires entitlement jurisdictions such as the City of New Orleans to do the following:

1. Conduct an analysis of impediments to fair housing,
2. Take actions to overcome these impediments, and
3. Maintain records reflecting the analysis and actions.

New Orleans continues to be a highly segregated city with great need for affordable housing and housing for people with disabilities in neighborhoods of opportunity. In March 2010, a draft analysis of impediments was completed. Although the analysis is deficient, it specifically identifies **land use codes and/or zoning regulations and the use of building moratoria as impediments to fair housing**. As it re-drafts the Comprehensive Zoning Ordinance, the City Planning Commission and City Council have an opportunity to take action to overcome this particular impediment to fair housing choice.

Other impediments to fair housing choice that contribute to residential segregation include:

- Discrimination in rental housing based on race and disability
- Discrimination against Section 8 voucher holders, who are disproportionately African American
- Adoption and implementation of local land use codes and/or zoning regulations which create obstacles to development of affordable housing for low and moderate income citizens and discriminate against minorities and people with disabilities
- Not in My Backyard (NIMBY) community opposition to affordable, multifamily, and supportive housing, often motivated by racism and stereotypes
- Board of Zoning Adjustments' decisions rejecting requests for variances for development of affordable housing and housing for people with disabilities
- Bans and/or moratoria on multifamily and affordable housing in some communities
- Rising housing costs that have a disproportionate effect on African Americans and Hispanics, the majority of whom are renters and low-income

The City's own Master Plan notes that all land use actions must be consistent with the policies identified in the "Land Use" section of the Master Plan, and the Master Plan identifies the need to increase homeownership opportunities and to evaluate potential actions such as incentive zoning and affordable housing trust funds.

In light of these impediments and provisions in the Master Plan, the CPC should recommend and the City Council should adopt two strategies in particular, utilized in cities and counties throughout the

country, that would help the City overcome impediments to fair housing and ensure that it is moving towards fulfilling its duty to affirmatively further fair housing.

Action 1: Adopt a Reasonable Accommodations Policy. A reasonable accommodations policy will provide a written procedure for developers of housing for people with disabilities to follow when requesting reasonable accommodations in zoning and land use decisions, as well as guidelines for the City Planning Commission to follow when considering such requests. Given the high percentage of people living with disabilities in New Orleans, it is imperative that developers of housing for people with disabilities have the opportunity to seek the kind of reasonable accommodations to zoning provisions required by fair housing law which would permit the development of housing to serve people with mental or physical disabilities.

Action 2: Adopt an Inclusionary Zoning Policy. Inclusionary zoning can incentivize or require developers to provide a certain percentage of affordable housing units in every new development. This policy, used in hundreds of cities throughout the country, will avoid the project-by-project political backlash against affordable housing, creating a more predictable and inviting atmosphere for developers. Moreover, inclusionary zoning will promote mixed-income development, which results in many benefits for the community, particularly creation of affordable places to live in desirable neighborhoods which are ethnically and economically integrated and which will provide greater opportunity for creating a diverse work force for working class residents who fill jobs in service, manufacturing, teaching, law enforcement, and other critical industries.

The CPC should consider other actions it can take to affirmatively further fair housing, specifically including:

- Higher density zoning, particularly in low-poverty neighborhoods, allowing for development of multifamily and affordable housing;
- A third-party appeals procedure for zoning decisions concerning affordable housing; and
- A fair share housing program that mandates that each neighborhood make land available for a certain amount of multifamily and affordable housing according to need.

The City of New Orleans should execute an integrated strategy that includes not only the CPC but all city agencies to implement a number of actions that would help make New Orleans a more just and equitable city and help ensure that New Orleans is meeting its obligation under the Fair Housing Act to affirmatively further fair housing. Other actions include:

- A source of income non-discrimination ordinance to ensure that voucher-holders can find housing in areas of opportunity,
- A housing mobility counseling program to assist voucher-holders who have an interest in moving to neighborhoods of high opportunity, and
- A local or regional housing trust fund.

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STRATEGIES TO AFFIRMATIVELY FURTHER FAIR HOUSING

Introduction

The drafting of a new Comprehensive Zoning Ordinance (CZO) and Master Plan presents a significant opportunity for the City Planning Commission (CPC) and City Council to implement innovative and effective strategies to enhance opportunity for all New Orleans residents and to ensure that the City of New Orleans is taking real steps to comply with the Fair Housing Act's requirement to "affirmatively further fair housing."

The devastation of Hurricane Katrina exposed a legacy of inequality throughout the Greater New Orleans region. The sharp decrease in the supply of affordable housing and persistent residential segregation resulted in African American and low-income residents bearing a vastly disproportionate share of the burden of the storm. The substantial decrease in the African American population in New Orleans is evidence of this reality.¹

Further, the success of New Orleans' metropolitan economy relies on having housing choices throughout the City that are available to residents of diverse populations with diverse incomes. Many employees in the hospitality industry have incomes below or at the poverty level, and school teachers have salaries that would qualify them as tenants in low-income housing tax credit developments. Additionally, studies show that in 2007 there were approximately 20,000 unfilled hospitality and tourism jobs in the city; overwhelmingly, prospective employees could not accept such jobs because of the lack of affordable housing in New Orleans.²

Zoning directly influences residents' housing choices and has a major influence on not only housing patterns but also the availability of transportation, jobs, open space, and good schools. Land use policy has played and continues to play an undeniable role in determining who was most affected by the hurricane, who has been able to return home, and who has opportunities to choose where they live. The success of New Orleans' revitalization depends on its livability and the opportunities afforded its residents.

The City Planning Commission and City Council can ensure a more economically integrated, livable, and just place to live. By adopting strategies that have been used successfully all over the country, the CPC and Council will play a key role in creating opportunities for all residents and in making New Orleans a competitive and prosperous city with a diverse work force and attractive, livable communities. In the process, the CPC and Council will also ensure that the City complies with the Fair Housing Act by taking measures that overcome barriers to fair housing and ensure greater access to adequate, affordable, and integrated housing for people of color and people with disabilities.

Affirmatively Furthering Fair Housing

The Fair Housing Act (FHA) requires all executive departments and agencies to administer programs relating to housing and urban development “in a manner [that will] affirmatively . . . further” fair housing.³

1. Why is New Orleans Obligated to Affirmatively Further Fair Housing?

*The receipt of federal housing funds obligates jurisdictions to affirmatively further fair housing.*⁴

The 2006-2010 Consolidated Plan (“CP”) for New Orleans is the five-year Housing and Community Development Plan which is required as part of the planning and application process for four formula grants.⁵ HUD approved the CP and New Orleans received approval for grants from 2006 to 2010, including Community Development Block Grant, HOME Investment Partnership and Housing Opportunities for Persons with AIDS/HIV (HOPWA), totaling almost \$28 million in 2010 alone.⁶

As a result of the receipt of these federal funds through HUD programs, New Orleans had an obligation to affirmatively further fair housing under the FHA. New Orleans has prepared a draft of the 2011-2013 Consolidated Plan in order to receive additional federal funds, further obligating it to affirmatively further fair housing.

2. How to Affirmatively Further Fair Housing

A grantee of CDBG funds is “required to submit a certification that it will affirmatively further fair housing, which means that it will:

- (1) conduct an **analysis to identify impediments** to fair housing choice within the jurisdiction;
- (2) take appropriate **actions to overcome the effects of any impediments** identified through that analysis; and
- (3) maintain records reflecting the analysis and actions in this regard.”⁷

A failure to meet these obligations could open the city to potential legal action. Currently, complaints are pending against the State of Louisiana and Jefferson Parish for inadequate Analyses of Impediments and/or failure to take actions to overcome impediments to fair housing.

The focus of this handbook is on this second requirement – taking appropriate actions to overcome the effects of impediments to fair housing choice in New Orleans – but it is also crucial that the city also adequately identify all of the impediments to fair housing choice.

3. Conduct an Analysis of Impediments

The Department of Housing and Urban Development (HUD) requires jurisdictions to complete an Analysis of Impediments to Fair Housing Choice in order to receive funds from HUD’s formula grant programs. The Analysis of Impediments serves as the basis for fair housing planning, provides essential information to policy makers, administrative staff, housing providers, lenders, and fair housing

advocates, and assists in building public support for fair housing efforts. Although the draft 2010 New Orleans Analysis of Impediments (“Draft AI”) has major deficiencies, it contains some important findings that should guide the City’s approach to fair housing.

The Draft AI summarizes recent studies and cases regarding barriers to fair housing in Louisiana but familiar to New Orleans, as follows:

“[T]he fair housing situation in Louisiana has been greatly affected by recent natural disasters, such as Hurricanes Katrina and Rita. Fair housing studies from the last five years showed that **racial and ethnic minorities have faced discrimination in efforts to find housing** in terms of discriminatory terms and conditions and advertising for rental properties. Additionally, **several communities in the state enacted laws after the storms that may have encouraged residential segregation**. Fair housing cases highlighted **discrimination against persons with disabilities and ethnic and racial minorities**”⁸ (emphasis added).

Both before and after Hurricane Katrina, jurisdictions throughout the region have proposed and implemented exclusionary policies that have restricted the creation of affordable housing. In addition, neighborhood groups have rallied against proposed affordable housing developments. Often, these exclusionary policies and neighborhood campaigns are fueled by discriminatory sentiment towards the prospective tenants of proposed development. These efforts have been found in many instances to violate fair housing law and other civil rights laws.

The Draft AI specifically identifies as one of five impediments to fair housing:

the “[i]mplementation of local land use codes and/or zoning regulations, or the use of construction moratoriums and householder ordinances that may not be in the spirit of affirmatively furthering fair housing”⁹ (emphasis added).

During a recent conference in New Orleans on the subject of affirmatively furthering fair housing, residents and advocates identified a number of other impediments to fair housing. Included in this list was the **lack of affordable housing in high opportunity neighborhoods due to NIMBYism, exclusionary zoning decisions, bans and moratoria on multifamily housing, and restrictions on modular homes**. Not only is there a dire need for affordable housing, but there also is need to create authentic housing choice and real opportunity through development of affordable housing in neighborhoods of opportunity which connects residents to transportation, healthy and safe neighborhoods, jobs, and infrastructure – is critical.

More work needs to be done to develop an adequate and complete Analysis of Impediments. The Draft AI is deficient because while it recognizes current land use and zoning policy, as well as exclusionary zoning practices targeted at racial minorities and people with disabilities as impediments to fair housing choice, it does not identify actions to overcome these barriers. The City Planning Commission and City Council are in a unique position to take appropriate steps to overcome these particular impediments by building into the CZO requirements and processes that anticipate the unfair implementation of the code and take proactive steps to ensure true opportunities for housing mobility and integration.

Summary: Impediments to Fair Housing in New Orleans

1. **Discrimination in rental housing** based on race and disability, including discrimination against voucher holders, who are disproportionately African American
2. **Lack of affordable housing in low-poverty neighborhoods** and the resulting residential segregation by race due to, among other things:
 - a. Implementation of **exclusionary local land use codes and/or zoning regulations**
 - b. “Not in My Backyard” (**NIMBY**) community opposition to affordable and multifamily housing, often motivated by racism and stereotypes about low-income people
 - c. **Board of Zoning Appeals decisions** rejecting permits or variances for development of affordable housing and housing for people with disabilities
 - d. **Bans and/or moratoria** on development of multifamily and affordable housing in some communities
3. **Rising housing costs** that have a disproportionate effect on African Americans and Hispanics, the majority of whom are renters and who are lower-income than white residents

Note: Descriptions of these impediments to fair housing in New Orleans are detailed in the final section of this handbook. See pages 16-22.

4. Actions to Overcome Impediments to Fair Housing

The zoning process offers an opportunity to fulfill the second requirement for affirmatively furthering fair housing: ***taking appropriate steps to overcome the barriers to fair housing choice identified in the Analysis of Impediments.***¹⁰

These steps must accomplish the “central goal of the obligation to [affirmatively further fair housing],” which, according to the court in the pivotal *Westchester* decision, is “to end housing discrimination and segregation.”¹¹

“ ***The central goal of the obligation to affirmatively further fair housing is to end housing discrimination and segregation.*** ”

Given the need for a more complete Analysis of Impediments, it is important that the City take steps to overcome impediments beyond those identified in the existing AI, including those described in more detail above and later in this handbook.

The next section focuses on two zoning strategies that the City could implement to overcome impediments to fair housing choice, and briefly discusses several other strategies the City should

seriously consider, summarized below. At a minimum, the City Planning Commission and City Council can and should incorporate an inclusionary zoning policy and a reasonable accommodations procedure into the next Comprehensive Zoning Ordinance.

Summary: Actions to Overcome Impediments to Fair Housing	In the Comprehensive Zoning Ordinance <ol style="list-style-type: none">1. Reasonable accommodations procedure2. Inclusionary zoning policy3. Higher density zoning in low-poverty neighborhoods4. Zoning appeals procedure5. Fair share policy Other Actions <ol style="list-style-type: none">1. Source of income non-discrimination statute2. Housing mobility program3. Housing trust fund
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5. The Master Plan

In addition to complying with the Fair Housing Act, all land use actions in the City of New Orleans, including those enacted in the CZO, must be consistent with the goals, policies and strategies in the section of the Master Plan called the “Land Use Plan.”¹²

The Master Plan, adopted in August 2010, is meant to be a “roadmap” for the development of New Orleans through 2030, containing principles that must be codified in the CZO. It notes that the non-subsidized and subsidized affordable housing units declined substantially after Hurricane Katrina, and that 80 percent of subsidized housing suffered severe or major damage from Hurricane Katrina. It describes the need:

1. to “increase affordable homeownership opportunities” and
2. to evaluate potential actions such as:
 - “transfer of development rights and incentive zoning in suitable locations and market conditions” and
 - “local affordable housing trust funds.”¹³

The Master Plan also discusses “Opportunity Sites,” or sites specifically identified for significant redevelopment, including mixed-income housing.¹⁴ The effective use of these and other sites equitably distributed throughout the City to promote desegregation would be a significant means of affirmatively furthering fair housing.

To codify the goals of the Master Plan, the CPC must propose and the City Council must adopt a zoning code that will permit multifamily and affordable housing as well as techniques designed to affirmatively further fair housing. Some of the most effective strategies are described below.

Actions to Overcome Effects of Impediments

The City Planning Commission and City Council have an opportunity both to create a more equitable development pattern in New Orleans and to meet the City's obligation to affirmatively further fair housing by addressing impediments to fair housing. The strategies described below have been adopted in cities throughout the country and would go a long way towards overcoming the effects of impediments to fair housing and towards ensuring a more economically integrated and livable New Orleans that provides opportunities for all residents.

Action 1: Reasonable Accommodations Procedure

New Orleans has a significant population of people with disabilities, and people with disabilities are in dire need of quality, affordable housing with supportive services. As of 2009, 15.9 percent of residents over eighteen years old in the New Orleans metropolitan statistical area had disabilities, compared to 14.6 percent nationwide.¹⁵ Of residents over 65 years old, nearly 40 percent had disabilities, compared to 37 percent nationwide. Of abandoned building dwellers in New Orleans, 76 percent suffer from mental illness and 58 percent have a physical disability.¹⁶ Nationwide, more than 38 percent of very low-income households including nonelderly people with disabilities had worst case needs (i.e., paid more than one-half of their income for rent and/or lived in severely inadequate conditions), reaching 41 percent among families with children including people with disabilities.¹⁷

When amending the federal Fair Housing Act in 1988, the decision to add disability discrimination to the Act was seen as “a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with [disabilities] from the American mainstream.”¹⁸

Despite the need – and the legal prohibition on discriminating against housing for people with disabilities – numerous local efforts to build this housing have been met with aggressive – and successful – not-in-my-backyard (NIMBY) resistance. This is especially the case when the housing is meant to serve those most vulnerable in the region – those who have physical or mental disabilities, or who are recovering from substance abuse. These tactics often take the form of rigid adherence to official zoning and/or building code requirements.

Providing a process for developers to seek reasonable accommodations in zoning and building regulations would encourage and facilitate the development of housing for people with disabilities, or supportive housing,^a meeting a critical need of the community and ensuring compliance with federal fair housing law.

Background: As amended in 1988, the Fair Housing Act (FHA) prohibits local governments from making housing opportunities unavailable to people with disabilities through discriminatory land use and zoning

^a Supportive housing for people with disabilities should be included within larger multifamily developments, constituting 10 to 20 percent of the overall units, in order to effectively promote integration. Services include pre-tenancy (e.g., ensuring eligibility and applying for housing), move-in (e.g., accessing resources for obtaining furniture, gaining familiarity with the neighborhood, making a deposit), and post-tenancy (e.g., financial management, maintaining the unit, accessing health care

rules, policies, practices and procedures. The FHA and the American Disabilities Act make disabled people a protected class under law. The legislative history of the FHA specifically recognized that zoning code provisions discriminated against people with disabilities by limiting opportunities to live in the community in congregate or group living arrangements.¹⁹

The FHA also explicitly includes in the definition of disability discrimination “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”²⁰ A reasonable accommodation claim does not require a showing of intentional discrimination.²¹

Further, Section 504 of the Rehabilitation Act of 1973, as amended, prevents discrimination against people with disabilities in the administration of any federally subsidy program, including housing.

Determining a Reasonable Accommodation: Developers and providers of housing for people with disabilities may request reasonable accommodations to overcome local zoning regulations that restrict their ability to provide housing to persons with disabilities. A reasonable accommodation must be requested by a developer of housing for persons with disabilities, and the developer must establish that (1) the housing at issue is for persons with disabilities as defined by the FHA²²; (2) the accommodation is necessary to make specific housing available to people with disabilities; (3) the requested accommodation will not impose an undue financial or administrative burden on the local government; and (4) the requested accommodation will not result in a fundamental alteration in the local zoning code.

Examples of Reasonable Accommodations in Land Use and Zoning: There are a number of situations in which a developer of housing for people with disabilities may request reasonable accommodations. Having a straightforward, predictable procedure to evaluate these requests will allow the City Planning Commission to handle these situations as they arise without having to anticipate every possible scenario. Moreover, relying on a procedure guided by Fair Housing considerations, rather than a flexible or discretionary variance process, will provide public officials with a process which can better address community opposition that is based on fears and stereotypes. Some examples where reasonable accommodations have been required of municipalities include the following:

- Housing developers may be entitled to a reasonable accommodation to reduce the number of parking spaces required at a development that includes housing for people with disabilities.²³ This is a particularly common situation, as people with psychiatric and physical disabilities, as well as seniors, do not own and use personal vehicles at the same rate as other residents. Supportive housing already relies on complicated financing structures. As a result, requiring a one-to-one ratio of parking spaces to units can make supportive housing developments that include supportive housing difficult or impossible to finance. Instead, allowing more units and less parking provides greater density and more rental income for the development.^b
- It is common for developers of group homes for persons with disabilities to make a request for reasonable accommodations when a local zoning code for a single-family or other low-density residential zone uses a definition of “family” that distinguishes between related and unrelated

^b Housing for people with disabilities is usually financed through the Low-Income Housing Tax Credit program and HUD’s Section 811 program. The supportive services themselves are financed separately through Medicaid and other federal and state programs.

- It is common for developers of group homes for persons with disabilities to make a request for reasonable accommodations when a local zoning code for a single-family or other low-density residential zone uses a definition of “family” that distinguishes between related and unrelated individuals and limits the number of unrelated persons that may reside together. In one case, a court held that a municipality had violated the FHA by failing to make a requested reasonable accommodation that would allow a twelve-resident home for elderly patients with disabilities to operate in an area zoned exclusively for single-family dwellings.²⁴
- Many municipalities have land use or zoning restrictions that for aesthetic reasons or to preserve homeowners’ views, impose a limit on the footprint of a dwelling in relation to lot size. These are referred to as “spacing” rules, which prohibit group homes for disabled persons unless they are spaced out a certain distance. Several courts have ruled that municipalities must change, waive, or make exceptions in this kind of zoning rule to afford people with disabilities the same opportunity to housing as those who are without disabilities.²⁵
- A developer may need to seek changes related to side yard and backyard zoning code requirements or substitution of side yard footage for rear yard footage in order to install ramps to meet the needs of persons with disabilities who use wheelchairs. Such an accommodation typically does impose an undue burden on the municipality.²⁶

Case Study:

Trading Parking for Housing

Volunteers of America (VOA) owned a development in New Orleans East that included 200 units of senior housing. During Hurricane Katrina, the building was flooded. Because emergency response time was poor in the area, VOA applied for Low Income Housing Tax Credits to build a new senior development rather than to place seniors in the same structure. VOA eventually found another piece of property on Tulane Avenue – the old Social Security Administration building, which had been flooded. The building already had parking spaces, but only about 50 spaces for 200 anticipated units, insufficient under the zoning code. Considering the orientation of the pre-existing structure and the relatively low vehicle ownership among seniors, VOA was able to secure a variance from the Board of Zoning Adjustments. Without the variance, the project would not have been financially feasible.²⁷

The process worked this time, but the potential for controversy and inconsistency demands the need for a clear policy.

A Reasonable Accommodation Policy: To clarify the reasonable accommodation requirement, the City Planning Commission and City Council should include provisions in the CZO addressing this issue. Many cities, including Baltimore, Maryland; Augusta, Georgia; and Sacramento, California, have reasonable accommodation policies in place, setting forth guidelines for applicants requesting reasonable accommodations and for decision-making bodies considering such requests.²⁸ Reasonable accommodations are required regardless of whether the jurisdiction has established a Reasonable Accommodations Policy. However, for jurisdictions that do not have reasonable accommodation procedures in place, costly litigation arising from traditional zoning provisions concerning requests for variances or conditional use permits is more likely. More detail on the components of a Reasonable Accommodations Policy is provided in Appendix A.

Public Sentiment: A significant obstacle to building housing for people with disabilities is the influence of public sentiment – even and especially when it is motivated by prejudice. Stereotypes, myths, and misunderstandings about the residents that such housing serves should not play into decisions by elected officials. Moreover, public hearings requirements may be subject to legal challenge “if limited to housing for people with disabilities.”²⁹ It is important, therefore, to ensure that public notice and hearings are broadly applicable and do not influence decision-making based on prohibited considerations under Fair Housing requirements, including the requirement to provide reasonable accommodations.

Recommendations for Reasonable Accommodations

1. Consult with developers/providers of housing for people with disabilities.
2. Draft procedures for reasonable accommodation requests to include in the CZO, addressing specifically the components described in Appendix A.
3. Disseminate procedures for reasonable accommodation requests.

Action 2: Inclusionary Zoning

The concentration of low-income housing units and other housing subsidies in high-poverty and low-opportunity neighborhoods, as discussed above, perpetuates segregation by race and class and denies low-income residents access to opportunities and amenities. Providing adequate incentives, or even requirements, for developers to include a certain percentage of affordable housing in all market-rate developments would ensure a more equitable distribution of affordable housing and create much-improved opportunities for people of color and low- and moderate-income residents to access jobs, open space, safe neighborhoods, and better infrastructure. Creating inclusive, affordable communities will in turn attract residents who work in service, tourism and hospitality, nursing, teaching, and other industries critical to the city's economic development.

Inclusionary zoning (also called “inclusionary housing”) may be mandatory or voluntary. Mandatory inclusionary zoning requires that new, private residential developments include a certain percentage of housing units affordable to low- and moderate-income households. Voluntary inclusionary zoning offers incentives to developers in exchange for providing a certain percentage of affordable housing units. Inclusionary zoning is a tool that a number of jurisdictions have used throughout the country, including in Massachusetts, New Jersey, Colorado, California, and the Washington, DC, metropolitan area.

Context: Simply put, New Orleans is segregated – by both race and class. African Americans are concentrated in some neighborhoods while white residents are concentrated in others. Exacerbating the situation is the placement of affordable housing in predominantly poor, minority areas (see maps above) because in more affluent neighborhoods, residents often oppose affordable housing construction and pressure their elected representatives to do the same. This opposition is rooted in myths and misunderstandings about affordable housing, as well as prejudice and stereotypes about its residents. Requiring or incentivizing a percentage of market-rate developments to include affordable units would go a long way in ensuring a more healthy mix of incomes and more integrated communities. It would counter the impact of NIMBY sentiment from playing a role in siting affordable housing.^c

State Authority: Louisiana's Inclusionary Zoning Statute provides “authority for and to permit municipalities and parishes to use inclusionary zoning to promote the development of affordable housing for low and moderate income families.”³⁰

Mandatory vs. Voluntary:

Affordable Housing Production: Mandatory inclusionary zoning creates more affordable housing than voluntary programs in both absolute numbers and in percentage of total development. In California, the fifteen most productive inclusionary zoning programs are mandatory and are more effective than voluntary programs at producing housing that target low- and very-low-income

^c Inclusionary zoning could also be used to incentivize or require the construction of supportive housing units. Stereotypes and prejudice also prevent the construction of badly needed housing for people with disabilities, and while a reasonable accommodations policy is critical, providing an affirmative incentive or requirement would ensure the development of housing for the most vulnerable residents.

populations in particular. Mandatory programs in Montgomery County, Maryland, and Fairfax County, Virginia, have produced homes for extremely low-income households.³¹ In contrast, two California communities with voluntary inclusionary zoning blamed the voluntary nature of their programs for stagnant production, even during a market-rate boom.³² Moreover, communities with voluntary programs must provide high levels of subsidies to entice developers to produce affordable housing.³³

Montgomery County's inclusionary zoning ordinance was enacted in 1974 and requires developments of more than 50 units to include 15 percent Moderately Priced Dwelling Units. Of that 15 percent, moderate-income first-time homebuyers can purchase two-thirds of the units and the local housing commission or local non-profits can purchase the remainder for use in their affordable rental programs. Montgomery County provides a "density bonus" to developers; that is, within local planning constraints, the County grants a builder the ability to build 22 percent more units in the subdivision than otherwise would be allowed. Private developers are not penalized for constructing moderately priced dwelling units, and have reasonable prospects of realizing a profit on such units by virtue of the density bonus. Also, developers of residential units in qualified projects are given extra flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting them contribute to a County Housing Initiative Fund.

Case Study:

Mandatory Inclusionary Zoning in Montgomery County, MD

Predictability: In addition, mandatory programs "provide developers with predictability by setting uniform expectations and requirements and establishing a level playing field for all developers." Without this clarity, developers "cannot price and value land appropriately and make informed investment decisions unless they know what the local community will allow them to build and what the local community will require from them."³⁴ A lack of predictability in a process "fraught with community politics" could result in applying the policy unfairly to different developers.³⁵

Overall Housing Production: Reliable studies conclude that communities with mandatory inclusionary zoning did not suffer negative effects on overall housing production levels. Moreover, officials in a number of cities around the country claim "they have not seen a decrease in development activity in their communities" since adopting inclusionary housing programs.³⁶

Success of Voluntary Inclusionary Zoning: Voluntary inclusionary zoning may be more politically feasible where affordable housing and density are already sensitive topics, and they have been successful given certain conditions. For example, in Chapel Hill, North Carolina, the voluntary 15 percent affordable housing program is "so rigorously marketed by town staff and the Town Council that no new residential developer, regardless of requiring a rezoning request, has approached the Planning Commission without at least a 15% affordable housing component or plans to pay a fee in lieu of building affordable units. Planning staff ... explain that developers construe the inclusionary zoning expectation as mandatory because residential development proposals are difficult, more expensive, and less likely to win without an affordable housing component."³⁷

Recommendations for Inclusionary Zoning

Below are questions the CPC must ask as it considers an inclusionary zoning policy. Appendix B provides more detailed guidance and recommendations.

1. Determine the following:
 - a. **Voluntary or Mandatory:** Specifically, assess whether a voluntary program would provide adequate incentives to developers, or whether a mandatory program would be more appropriate.
 - b. **Off-Site or On-Site:** Will off-site affordable housing be allowed, and if so, what will the specific requirements be?
 - c. Whether outside subsidies will be allowed to finance the affordable units.
 - d. **Term of Affordability**
 - e. **Income Target:** What income levels will qualify for the affordable units?
2. If **mandatory**, determine the following:
 - a. **Set-Aside:** Percentage of new construction that must be affordable.
 - b. **Project Trigger:** The number of units in a development that trigger the affordable housing requirement.
 - c. **In-Lieu Fees:** Based on the cost of construction, fees should be calculated in order to cover future development of affordable units.
3. If **voluntary**, determine which **incentives** to adopt and the parameters of each:
 - a. **Density bonus:** Generally ranges from 20 to 25 percent, and the corresponding percentage of affordable housing.
 - b. **Fee waivers:** Reduce the costs to developers by waiving infrastructure and/or permit fees. The fees are typically for infrastructure development, municipal services, and city processing fees.
 - c. **Expedited permitting:** Typically includes a simultaneous review process for all permits needed for the development and first priority in the review process.

Additional Actions

The strategies described above – Inclusionary Zoning and a Reasonable Accommodations Policy – are two of the most effective and most relevant practices that the City Planning Commission and City Council can adopt in order to move towards affirmatively furthering fair housing and ensuring more equitable development in New Orleans. However, other important strategies should also be considered.

Other actions that the City Planning Commission, in particular, should implement include the following:

Higher Density Zoning	Simply re-zoning some areas – both commercial and residential – for multifamily housing would go a long way towards ensuring that developers can construct affordable housing cost-effectively. Other changes to minimum street frontage, front yard setbacks, side yard dimensions, and other zoning requirements could also facilitate the construction of multifamily, affordable, and supportive housing.
Zoning Appeals Procedure	Numerous states, including Massachusetts, Connecticut, and Illinois, have implemented third-party appeals procedures where a proposed affordable or supportive housing development is rejected by a local zoning or permitting board. An objective third party can help counter local NIMBY efforts that influence local decision-makers.
Fair Share Agreements	Fair Share Agreements require municipalities to submit plans for how they will meet housing needs in their communities and in the state (examples include Florida, California, New Jersey, Portland and the Twin Cities). In each case, a formula is used to calculate the number of affordable housing units a given municipality will need to create to meet their “fair share” of regional housing needs. While the basic variables are usually quite similar and include employment growth, available land and population growth, the allocation processes differ by state.

Other governmental bodies may be more appropriately charged with the adoption and implementation of some of the policies below, including the City Council, the New Orleans Office of Community Development, the Housing Authority of New Orleans, the Louisiana Office of Community Development and State Legislature, and may require coordination on a regional basis.

Source of Income Non-Discrimination	<p>Several states and municipalities have created legislation making it unlawful for landlords to discriminate against prospective tenants based on source of income, defined as any lawful, verifiable source of income paid directly to the tenant, including Section 8 vouchers. This type of legislation makes it easier for low-income residents, including people with disabilities, to find housing in low-poverty neighborhoods.</p>
Housing Mobility Program	<p>A housing mobility program sets aside a certain number of Housing Choice Vouchers to tenants who wish to move to neighborhoods of opportunity. These programs include counseling for all voucher holders, both pre- and post-move. Extensive studies on such programs show participants report a variety of economic and social benefits. These benefits include increases in household income, long-term educational benefits for children, and low return rates to segregated, impoverished neighborhoods. Successful programs have been established in Baltimore, Chicago and Dallas.</p>
Housing Trust Fund	<p>Housing Trust Funds are city- or state-wide funds that provide funding for developing affordable housing. Usually this assistance comes in the form of below market-rate loans and grants, designed to help households at or below a certain percentage of AMI (the Louisiana Housing Trust Fund uses 120 percent of AMI, but states have requirements as low as 30 percent).³⁸ In addition to grants or loans for the development of affordable housing, housing trust funds can also provide assistance in the form of homebuyer assistance, including down-payment assistance, counseling, and mortgages, as well as gap funding for developers that have other sources of funding.³⁹</p> <p>The most common source of local dedicated funding for housing trust funds comes from a real estate transfer tax (levied on the sale of real estate based on sales price) or a documentary stamp tax (a fee charged per page for documents that must be recorded as public records). Another source of funding has been a fee charged for new development of residential or commercial real estate. Currently, 625 city and county housing trust funds are in operation.⁴⁰</p>

An Analysis of Impediments to Fair Housing in New Orleans

The need for aggressive policies to overcome barriers to fair housing and to create a more equitable and livable city is especially great in New Orleans. Policies such as inclusionary zoning and a process for requesting and considering reasonable accommodations for housing for people with disabilities are important first steps that the City Planning Commission and City Council can incorporate into the new Comprehensive Zoning Ordinance (CZO).

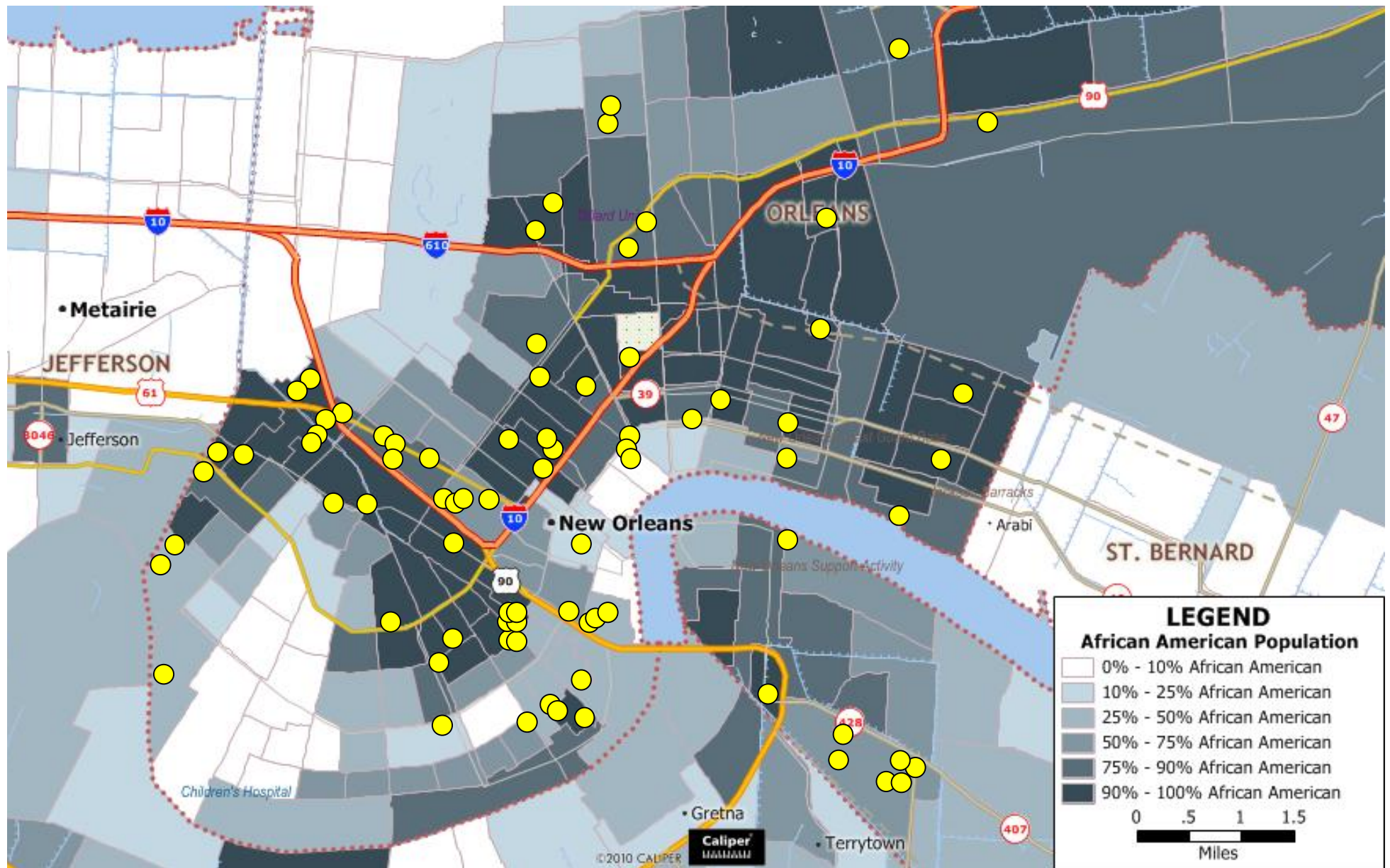
Housing patterns continue to segregate the city's residents, relegating affordable and multifamily housing – and African Americans – to the poorest neighborhoods with the fewest resources. Market-rate housing continues to be prohibitively expensive, preventing socio-economic and racial integration. And discrimination in housing, including against Section 8 voucher holders, who are predominantly African American, exacerbates the unequal access to opportunity and the lack of real choice.

1. Residential Segregation

Persistent residential segregation – by race and by class – is a root cause of unequal access to housing and other opportunities in New Orleans. While some neighborhoods effectively connect jobs, retail, transportation options, housing, parks, and schools, other neighborhoods lack basic amenities and infrastructure, including grocery stores, banks, and open space. Moreover, residential patterns create a clear and detrimental division by race. In New Orleans, as throughout the country, the opportunities that many children and families have to achieve are determined by where they happen to live.⁴¹ These segregated housing patterns violate the basic American principles of equality and integration, and the City has a duty under the Fair Housing Act to take affirmative steps to address the problem. The City Planning Commission and City Council can and should adopt policies in the CZO to ensure a more integrated, mixed-income and mixed-use city that creates opportunities for all residents regardless of race and class.

The following maps illustrate the distribution of affordable housing projects financed by the Louisiana Housing Finance Agency. Although they are dispersed in various areas of the city, these projects are disproportionately located in high-poverty, low-income, and predominantly African American communities, winding around low-poverty, higher-income, predominantly white communities. A number of factors contribute to the siting of tax credit housing in high-poverty areas. For instance, higher-density zoning may allow for economies of scale that keep construction costs low for private and nonprofit developers, and the Internal Revenue Service, which administers the Low-Income Housing Tax Credit program, offers a 30 percent increase in available funding for projects in “qualified census tracts,” which are, by definition, low-income. Perhaps just as influential is political opposition from well organized neighborhood associations in higher-income areas, based on misguided stereotypes about residents of affordable housing and fears that affordable housing will decrease surrounding property values and bring crime.

Map 1. Affordable Housing Developments and African American Population in 2010



Sources: Locations of affordable housing developments are based on Louisiana Housing Finance Agency data and include projects in the pipeline and projects already placed in service. Data is based on the 2010 U.S. Census.

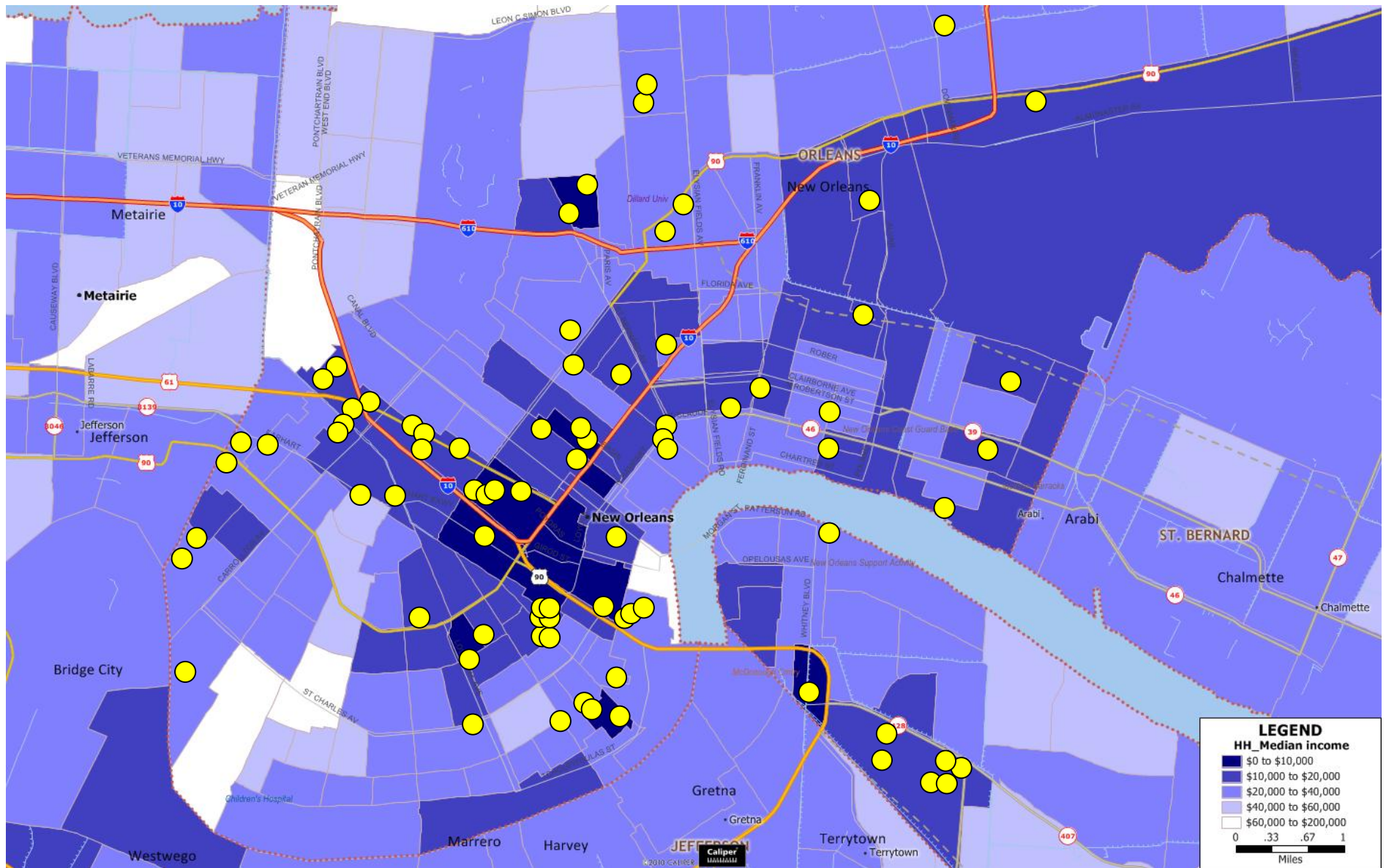
LEGEND
Individuals Living Below Poverty Line

- 0% - 15% Living Below Poverty Line
- 15% - 30% Living Below Poverty Line
- 30% - 45% Living Below Poverty Line
- 45% - 60% Living Below Poverty Line
- 60% - 100% Living Below Poverty Line

0 1 2 3
Miles

Sources: Locations of affordable housing developments are based on Louisiana Housing Finance Agency data and include projects in the pipeline and projects already placed in service. Data is based on the 2010 U.S. Census.

Map 3. Affordable Housing Developments and Median Household Income in 2010



Sources: Locations of affordable housing developments are based on Louisiana Housing Finance Agency data and include projects in the pipeline and projects already placed in service. Data is based on the 2010 U.S. Census.

One of the most important sources of creating housing choice, the Housing Choice Voucher program (or Section 8), has further exacerbated segregation in New Orleans. Voucher holders are concentrated in high-poverty areas of the City because building owners in more affluent communities will not accept vouchers. Further, 99 percent of voucher holders are African American, creating segregation as a result of limited rental opportunities for voucher holders.⁴²

Additionally, a study by the Greater New Orleans Fair Housing Action Center (GNOFHAC)⁴³ indicates that landlords denied voucher holders the opportunity to rent 82 percent of the time, either by outright refusal to accept vouchers (75 percent of the time) or by the addition of insurmountable requirements that would make rental impossible (7 percent). The study further indicated that there were two primary causes for such discrimination: discrimination against and stereotypes of low-income African Americans and the dysfunctional administration of the housing voucher program. This reflects discrimination against African American potential renters in both intent and impact.

Another study by GNOFHAC indicates that as of April 2007, there was a 57.5 percent rate of rental discrimination in metro New Orleans rental housing searches.⁴⁴ GNOFHAC conducted its investigations by sending comparable African American and white potential renters to different units, expressing interest in becoming a tenant. The testing showed that white renters were favored by landlords, despite similar career paths, income, family types and rental histories. The strategies used were subtle, such as not returning calls from African American testers, not providing applications to African American testers and not showing available units to African American testers. Broken down by parish, differential treatment was found to occur 50 percent of the time in Jefferson Parish, 60 percent of the time in St. Tammany Parish and 55 percent of the time in Orleans Parish.

2. Rising Housing Costs

An essential part of ensuring that low- and moderate-income people can live in neighborhoods of opportunity is the provision of quality, affordable housing in these places. Despite significant efforts to construct and rehabilitate affordable housing, the need is as great as ever.

The average housing costs in 2009 – including mortgage payments, utilities, taxes, and insurance – increased 19 percent from pre-Katrina (2004) levels, to \$1,072 per month.⁴⁵ As a result, 39 percent of New Orleans homeowners are currently cost-burdened – that is, their housing costs exceed 30 percent of their pre-tax household income.⁴⁶ This is significantly higher than the national percentage of homeowners that are cost-burdened – 31 percent.⁴⁷

Renters face an even more critical lack of affordability. As a result of the destruction from the Hurricane, thousands of inexpensive or low cost market rate rental units were lost or severely damaged. From 2004 to 2009, housing costs for renters – rent plus utilities – increased 37 percent, a prohibitive rise for the majority of low-income families. The high costs of rehabilitation and reconstruction, as well as higher insurance premiums, have put average rental costs in New Orleans at \$881 per month – a rate that is higher than both the national average and averages in many comparable cities.⁴⁸

The affordability problem is especially severe in New Orleans because the wage levels for many of the most prevalent occupations in the City are very low. Workers earning between \$15,000 and \$34,999 annually or lower can afford only between \$300 and \$500 on rent per month, based on federal

standards of affordability. In 2009, 38 percent of New Orleans renters paid at least half of their income on housing.⁴⁹

3. Effect of Housing Costs on People of Color⁵⁰

Although the lack of affordable housing affects people of varying incomes and across race, poor and minority residents bear a disproportionate burden. In other words, the lack of rental housing and the lack of affordable housing – and efforts to oppose the development of such housing – have a disparate impact on people of color and poor people. This disproportionate effect on minority residents presents a fair housing challenge – and an opportunity and obligation, under the City’s duty to affirmatively further fair housing, to make it right.

In the city of New Orleans, African Americans are on average poorer than Non-Hispanic whites (see Table 1, below). Because of this relative poverty and a pervasive lack of affordable housing, African Americans are also more likely to be rent-burdened.

Table 1. Median Household Income in New Orleans in the Past 12 Months by Race (2009 inflation-adjusted dollars)	
Race	Income
All	\$36,258
Non-Hispanic White	\$60,512
Black or African American	\$26,225
Hispanic or Latino	\$33,270
Asian-American	\$40,366

African American and other minority residents of New Orleans are more often renters, as opposed to homeowners, than white residents (see Table 2, below). The lack of affordable rental housing therefore unfairly burdens the African American population, as well as other minority groups.

Table 2. Tenure - Occupied Housing Units in New Orleans by Race (2009)	
Race	% that are Renters
All	49%
Non-Hispanic White	37%
Black or African American	56%
Hispanic or Latino	52%
Asian-American	42%

Poorer residents pay more in housing costs as a percentage of their income and, therefore, are more likely to be cost-burdened (also see Table 3, below). Since African Americans are more likely to be poor

than whites and also more likely to be renters, the burden of unaffordable housing costs falls more heavily on African American residents than white residents.

Table 3. Likelihood of being Rent-Burdened (Renters Paying More than 30% of Income Towards Rent) by Income (2009)		
Income	Rent-Burdened Households	% of Rental Households that are Cost-Burdened
Less than \$20,000	18,352	74%
\$20,000 to \$34,999	7,983	66%
\$35,000 to \$49,999	2,103	29%
\$50,000 to \$74,999	876	14%
\$75,000 to \$99,999	76	3%
\$100,000 or more	48	2%

The continuing housing demand and lack of affordability for many homeowners and renters, particularly African Americans, as well as the historical regulatory barriers and recurring attempts to curb affordable housing development, demand immediate action. Public officials must act now to take the necessary steps to affirmatively further fair housing by closing the affordability gap that prevails in New Orleans and by providing real housing choice in neighborhoods of opportunity.

Conclusion

New Orleans is a great city and can be even greater. The City Planning Commission and City Council can help New Orleans live up to the American ideals of equality, opportunity, and diversity, and at the same time help move the city towards meeting its obligations under the federal Fair Housing laws. Providing real housing choice, furthering residential integration and greater opportunity, and ensuring compliance with the Fair Housing Act require an honest assessment of the barriers to fair housing and proactive efforts to overcome these barriers. The re-drafting of the Comprehensive Zoning Ordinance provides a timely opportunity to incorporate these ideals and goals.

The City Planning Commission and City Council should immediately incorporate two policies that would significantly strengthen New Orleans' commitment to affirmatively furthering fair housing, as required by federal law: 1) a procedure for addressing requests for reasonable accommodations in zoning and 2) inclusionary zoning. The first would ensure a just process for developing housing for people with disabilities, a group in dire need of affordable, supportive housing that is often the target of community opposition based on stereotypes and outright prejudice. The second would ensure a more racially integrated city, providing greater opportunities for children and families of all races, as future development occurs.

Although the adoption of these strategies would be a major step forward in affirmatively furthering fair housing, it is just the starting point. The City must adopt a comprehensive set of strategies to ensure that it effectively complies with the requirement to affirmatively further fair housing. Until that happens, New Orleans will continue to remain one of the most segregated cities in the country.

Appendix A: Reasonable Accommodations

A Reasonable Accommodations Policy should include the following components:

The Sources of Law: Provides applicants and decision-makers equal footing upon which to consider reasonable accommodation requests. Any such policy guide section should include descriptions of and relevant excerpts from any federal law, such as the Fair Housing Act, the Rehabilitation Act, and the Americans with Disabilities Act, and any state or local law, which together form the governing law regarding reasonable accommodations. Case law should supplement statutory recitation where it would be informative for reasonable accommodation requesters or those considering such requests.

The Intention of Law: The intent of the law is to prevent discrimination against individuals on the basis of their disability, but other factors, such as public health, safety, and financial burden all play a role in determining whether a request constitutes a request for a reasonable accommodation.

The Definition of Handicap/Disability: Provides a clear understanding of whom reasonable accommodations laws are meant to protect and the type of housing that qualifies.

The Request Process: Explains how qualified individuals, developers, or providers of housing for people with disabilities should make reasonable accommodation requests, who exactly may submit a request and when, and how to submit a request.

The Review Process: Describes the factors involved in reviewing a request, such as 1) whether the population being served meets the definition of persons with disabilities, 2) whether the requested accommodation would facilitate the development of the proposed project, and 3) whether the requested accommodation and modification of rules or policies is reasonable.

The Response: May include when the applicant should expect to hear back from the zoning authority and what form the response will take. Denials of requests should be in writing or in an appropriate alternative format and should identify reasons for such denial and should advise applicants of rights to grievance hearings or other forms of recourse. Approvals of requests should be in writing or in an appropriate alternative format.

Appendix B: Inclusionary Zoning

Percentage Set-Aside: Inclusionary zoning programs require that a specific percentage of units, typically 10 to 25 percent, be designated and set aside as affordable.⁵¹ Because the percentage set-aside impacts the cost borne by developers, municipalities often vary the percentage based on target income levels or other relevant parameters. In California redevelopment areas, for example, six percent of units are reserved for very-low-income households, three percent for low-income, and six percent for moderate-income.⁵²

Project Trigger: The trigger determines the universe of developments that are subject to inclusionary requirements, whether 5, 10 or 50 unit buildings, and so on. Municipalities will often mandate all new developments to apply inclusionary zoning requirements, and will take the scope of the development into account. For instance, jurisdictions will require larger developments to construct affordable units, while allowing smaller developments to pay a fee in-lieu of construction.⁵³

Income Targets: Inclusionary zoning programs define the income targets for which the developer must produce housing, and where these targets are set determines who can benefit from the affordable housing. A jurisdiction that “wants to provide housing for moderate-income households, such as public sector employees, might set an income target at 80 percent of the AMI. Jurisdictions seeking to create affordable units for lower-income wage earners might choose an income target of 50 percent of AMI.”⁵⁴ Affordability challenges that cut across income level can be tiered, “in order to serve diverse needs (e.g., half the units at 50 percent of AMI, half the units at 80 percent of AMI).”⁵⁵ Ultimately, income targets set between 50 percent and 120 percent of AMI have shown the greatest success nationwide. When combined with policies that utilize public resources, such as home buyer assistance, municipal subsidies, and housing voucher requirements, even deeper levels of affordability can be achieved. In Cambridge, MA, the municipality instituted an inclusionary zoning program that requires a number of inclusionary units be reserved for housing choice voucher holders, adding another layer of resources to address acute affordable housing needs.⁵⁶

Term of Affordability: In order to reach the goal of integrated and affordable communities, many inclusionary zoning programs now require a minimum unit ownership of 30 years, and a minimum rental of 45 years or more. This long term of ownership and affordability keeps housing units affordable for future generations.⁵⁷

Fee-in-Lieu: Fee-in-lieu requirements often accompany mandatory inclusionary zoning requirements and provide the option for developers to contribute a fee to a housing trust fund rather than include affordable units. The fee is usually based on the cost of constructing those units.⁵⁸ The amount can range from \$10,000 to \$100,000 depending on the jurisdiction. In Tallahassee, Florida, the fee ranges from \$10,000 to \$25,000 based on the “maximum affordable sales price” of a unit. In Chicago, IL, developers can pay up to \$100,000 per unit they do not build, with the fee adjusted for inflation. More typically, programs will establish fees based on the type of unit built and on the square footage of the unit. For example, in San Jose, CA, the fee is \$17.00 per square foot for a rental unit and a fee of \$8.50 per square foot in “high rise incentive areas.”⁵⁹

On-Site vs. Off-Site: Inclusionary zoning programs can require developers to construct affordable units onsite, within the larger development, or allow developers to build the units offsite. Though the construction of onsite affordable units has had the valuable effect of more racial integration and greater economic opportunities for low- or moderate-income community members, jurisdictions “must assess the political climate and the costs associated with onsite vs. offsite construction,” as many factors will contribute to the support of – or resistance to – a development project.⁶⁰ In an area with very expensive land, for instance, offsite construction may lessen the cost burden on developers and meet less political opposition. However, jurisdictions must be cautious not to limit or concentrate affordable housing to certain areas; such actions and policies have historically contributed to concentrations of poverty and dissolve many of the economic, educational, and social opportunities unlocked by integrated neighborhoods.⁶¹

Incentives: The following are examples of incentives to private developers used in voluntary inclusionary zoning programs:

Density Bonuses: Provides developers the ability to include additional market rate units for every low-income unit they include in the development. This gives developers the option of exceeding the density for which an area is zoned (usually capped at a given percentage above the zoned density). The reasoning behind density bonuses is to allow developers who include affordable units to be able to include enough market-rate units that the development as a whole is still profitable. Usually, there must be a minimum percentage of units designated as affordable for the development to qualify. Density bonuses have been used in tandem with Massachusetts’s Chapter 40B provision in and around Boston⁶², and are part of the zoning regulations in San Diego, CA; Arlington, VA; and Ashland, OR.⁶³

Unit Size Reduction: Provides developers the ability to build smaller or “differently configured” affordable units.⁶⁴ The inclusionary units would be adjusted relative to the market rate, in order to reduce construction and land costs. Usually, there is a minimum size to which the units can be reduced. In Burlington, VT, one-bedroom units must be at least 750 square ft., two-bedroom units must be at least 1,000 square ft., and four-bedroom units must be at least 1,250 square ft.⁶⁵

Relaxed Parking Requirements: Gives developers the flexibility to include less than the specific number of spaces or size of space typically required for each affordable unit they add to the project. This can lead to greater efficiency, especially in higher density developments with underground or structured parking. Developers have the option to reduce the number or size of parking spaces, or to implement “tandem parking” or other *ad hoc* parking methods.⁶⁶ One policy, in Denver, CO, “waives ten required parking spaces for each additional affordable unit, up to a total of 20 percent of the original parking requirement.”⁶⁷

Design Flexibility: Gives developers latitude in the design requirements and guidelines for inclusionary housing projects, in relation to land use and infrastructure needs. These may include reduced setbacks from the street or property line, waived minimum lot size requirements, permitted modifications of road width, greater floor-to-area ratio allowances, etc.⁶⁸

Fee Waivers: Municipalities can offer fee waivers for housing developments that include a set percentage of affordable housing units. These may include permitting fees or infrastructure

fees (sewer and water permit fees, electrical hook-up fees, new service road construction fees, etc.).⁶⁹ Municipalities will need to budget for this loss of revenue.

Expedited Permitting: Provides a fast-tracked permitting process for new developments that include a certain percentage of affordable housing units. For example, Santa Fe, NM, expedites permits (and waives a variety of permitting fees) for any development that has more than 25 percent of its units designated as affordable. Pinellas County, FL, gives priority in their permit review process to any development that includes an affordability component.⁷⁰

Misconceptions: Many times, the designation “affordable” is enough to incite protest from communities worried about over-development or falling real estate values. However, the strongest opposition to an inclusionary zoning policy comes from private developers, the real estate community and public officials who oppose affordable housing. Some of the arguments made against inclusionary zoning include:⁷¹

- *“Inclusionary zoning policies will promote over-development and congestion.”* There is no evidence that inclusionary zoning has produced such negative effects. One effective counter-argument to this idea is that IZ policies actually promote reasonable density in development, leading to less housing sprawl and the preservation of open space.
- *“Inclusionary zoning dampens private development.”* A recent, long-term study of the impact of California inclusionary housing programs on market rate housing production found that **not a single program had a negative effect on housing production**. In fact, most jurisdictions with inclusionary programs saw an *increase* in housing production (sometimes dramatically).⁷²
- *“Inclusionary zoning is an illegal ‘taking’ that diminishes profits.”* The truth is that the various forms of compensation granted to developers offset the costs associated with producing affordable units. An important case which struck down this argument was the 1999 lawsuit against the city of Napa brought by the Home Builders Association of Northern California. The court noted that the incentives offered by the inclusionary zoning ordinance (as well as the possibility of a waiver in cases of extreme hardship) provided enough benefits and options to developers that the ordinance could not be considered a taking.⁷³
- *“Private developers are not responsible for producing affordable housing.”* Opponents argue that the production of affordable housing is the responsibility of the public sector, and that inclusionary zoning unfairly shifts this responsibility to the private sector. In reality, private developers benefit from public investments in infrastructure and receive compensation and other incentives for developing affordable units.

Notes

¹ According to the 2010 U.S. Census, New Orleans has 118,546 fewer African Americans than it did in 2000, accounting for approximately 84% of the total population loss. See, Greater New Orleans Community Data Center, “What Census 2010 Reveals about Population and Housing in New Orleans and the Metro Area,” Feb. 3, 2001, p.1, *available at* https://gnocdc.s3.amazonaws.com/reports/GNOCDC_Census2010PopulationAndHousing.pdf.

² Greater New Orleans Fair Housing Action Center, “Housing Choice in Crisis, An Audit Report on Discrimination Against Housing Choice Voucher Holders in the Greater New Orleans Rental Housing Market,” 2009, p.8, *available at* <http://www.gnofairhousing.org/pdfs/HousingChoiceInCrisis2009.pdf>.

³ 42 U.S.C. § 3608(d); 24 C.F.R. § 570.601(a)(2)

⁴ 42 U.S.C. § 5304(b)(2) provides: “Any grant under [the CDBG program] shall be made only if the grantee certifies to the satisfaction of the Secretary that ... the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 and the Fair Housing Act, and the grantee will affirmatively further fair housing.”

⁵ City of New Orleans 2006-2010 Consolidated Plan, *available at* <http://www.cityofno.com/Portals/portal49/Resources/DraftActionPlan2007.pdf>.

⁶ U.S. Department of Housing and Urban Development, “Community Planning and Development Program Formula Allocations for FY 2010,” *available at* <http://www.hud.gov/offices/cpd/about/budget/budget10/index.cfm>.

⁷ 24 C.F.R. § 91.225(a); 24 C.F.R. § 570.601(a)(2).

⁸ State of Louisiana Division of Administration Office of Community Development, *2010 Analysis of Impediments to Fair Housing: City of New Orleans*, Draft Report for Public Review, prepared by Western Economic Services, LLC, March 1, 2010, p. 78, *available at* http://www.doa.louisiana.gov/cdbg/dr/aoi/NewOrleans_DPR.pdf.

⁹ *Id.* at 8.

¹⁰ See U.S. Department of Housing and Urban Development, *Fair Housing Planning Guide*, Vol. 1, 1996, at ch. 1, p.2, 1996, *available at* <http://www.hud.gov/offices/fheo/images/fhpg.pdf>; see also (i) *Shannon v. HUD*, 436 F.2d 809 (3rd Cir. 1970), (ii) Section 109 of Title I of the Housing and Community Development Act of 1974, which prohibits discrimination on the basis of race, color, religion, national origin and sex, and (iii) Exec. Order No. 12892.

¹¹ *U.S. ex rel. Anti-Discrimination Center v. Westchester County*, 668 F.Supp.2d 548, 564 (S.D.N.Y. Feb. 24, 2009).

¹² Plan for the 21st Century, Volume 2, Part 1, p.1, *available at* https://www.communicationsmgr.com/projects/1371/docs/Vol2_Force_of_Law.pdf.

¹³ *Id.* at ch.5, pp.5, 31-5, *available at* https://www.communicationsmgr.com/projects/1371/docs/Vol2_Ch5_Neighborhoods_Housing.pdf.

¹⁴ *Id.* at ch. 14, *available at* <http://www.nolamasterplan.org/documentsandresources.asp#C12>.

¹⁵ U.S. Census Bureau’s American Community Survey conducted in 2009

¹⁶ City of New Orleans, Draft 2011-13 Consolidated Plan, p.32, citing a survey by UNITY of Greater New Orleans.

¹⁷ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, “Worst Case Housing Needs 2009: Report to Congress, Summary,” pp.vii-viii.

¹⁸ U.S. House of Representatives, Committee on the Judiciary, Report 100-711: the Fair Housing Amendments Act of 1988, note 21, at 18.

¹⁹ See H.R. Rep. No 711, 100th Cong., 2d Sess. 24 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2185 (“While state and local governments have authority to protect safety and health and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals to live in communities. This has been accomplished by such means as the enactment or imposition of . . . land use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against people with disabilities.”)

²⁰ FHAA, §807(f)(3)(B), 42 U.S.C. 3607(f)(3)(B).

²¹ *Good Shepherd Manor Foundation, Inc. v. City of Mommence*. 323 F3d 557, 562 (7th Cir. 2003) See also, *Wisconsin Community Services, Inc. v. City of Milwaukee*, 465 F.3d 737, 753 (7th Cir. 2006)(en banc).

²² The FHAA protects people who have a “handicap,” including (1) those with a physical or mental impairment which substantially limits one or more major life activity, (2) those having a record of such an impairment, or (3) persons being regarded as having such impairment (but the term does not apply to persons currently using illegal drugs or addicted to a controlled substance). Fair Housing Amendments Act of 1988 § 5, 42 U.S.C. § 3602(h) (2000). Note that this section uses the phrase “person with a disability” rather than “handicapped person” when referring to those protected by the FHAA.

²³ See *United States v. Puerto Rico*, 764 F. Supp. 220 (D.P.R. 1991).

²⁴ *Smith & Lee Assoc. v. City of Taylor, Mich.*, 102 F.3d 781, 796 (6th Cir. 1996).

²⁵ See *Horizon House Developmental Servs., Inc. v. Upper Southampton*, 804 F. 683 (E.D. Pa. 1992); *United States v. Village of Marshall*, 787 F. Supp. 872, 876-78 (W.D. Wis. 1992); *United States v. Puerto Rico*, 764 F. Supp. 220, 224 (D.P.R. 1991).

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- ²⁶ See *U.S. v. City of Philadelphia*, 838 F. Supp. 223 (E.D. Penn. 1993).
- ²⁷ Interview with Amber Seely, project manager at Volunteers of America and policy committee chair at Greater New Orleans Housing Alliance, March 23, 2011.
- ²⁸ Baltimore’s reasonable accommodations policy is available here:
http://static.baltimorehousing.org/pdf/zoning_reasonable.pdf.
- ²⁹ Corporation for Supportive Housing, “Between the Lines: A Question & Answer Guide on Legal Issues in Supportive Housing, p.97, available at <http://www.csh.org/index.cfm/?fuseaction=Page.viewPage&pageID=3259>.
- ³⁰ La. R.S. 33:5002 (2006).
- ³¹ Business and Professional People for the Public Interest, “Voluntary or Mandatory Inclusionary Housing? Production, Predictability, and Enforcement,” Aug. 2004, p.4, available at http://www.inclusionaryhousing.ca/wp-content/uploads/2010/01/ResourceUS_BPI_VolMan03.pdf.
- ³² *Id.* at 2.
- ³³ *Id.* at 4.
- ³⁴ *Id.* at 5.
- ³⁵ *Id.* at 5.
- ³⁶ *Id.* at 7.
- ³⁷ *Id.* at 3.
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- ⁴⁷ *Id.*
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ Compiled from the following 2005-2009 American Community Survey (ACS) Census Bureau Data Sets: B19013, B19013B, B19013D, B19013H, B19013I, B25003, B25003B, B25003H, B25003I, and B25074.
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- ⁵³ *Id.*
- ⁵⁴ *Id.*
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
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⁶⁷ *Id.*

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