

VICKI BEEN
Commissioner

Office of the Commissioner
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New York, N.Y. 10038

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September 5, 2014

Ms. Michelle Aronowitz
Deputy General Counsel
Head Quarters
U.S. Department of Housing and Urban Development
451 7th Street, Southwest Room 10110
Washington, DC 20410

Mr. Bryan Greene
General Deputy Assistant Secretary, Office of Fair Housing and Equal Opportunity
Head Quarters
U.S. Department of Housing and Urban Development
451 7th Street, Southwest Room 6204
Washington, DC 20410

Ms. Jo-Ann Frey
New York Center Director, Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
26 Federal Plaza- 35th Floor
New York, NY 10278

Dear Ms. Aronowitz, Mr. Greene, and Ms. Frey,

I am writing to follow up on our conversation about HUD's concerns about the fair housing implications of New York City's use of community preferences in the lease-up of housing units we have financed.

As you know, New York City distributes the affordable apartments or homes for which it has provided financing to support new construction or preservation through a lottery process. New York City is divided into 59 community districts. Under the terms of our agreements with the developers, who actually conduct the lease-up, residents of the community district in which the site is located receive a priority for 50% of the affordable units in the project. For projects receiving New York's main tax benefit for new construction, this preference is written into state law (Real Property Tax Law §421a(6)(d), 421a(7)(d)(ii), and 421a(13)(d))), but generally the community district preference is a matter of tradition and political practice.

You raised concerns about the effect that the community district preference might have on New York City's obligations under the Fair Housing Act of 1968, and under the Affirmatively Furthering Fair Housing regulations proposed in July 2013, and now pending final release. We have provided below some context for the discussion, followed by an explanation of how we think we can address the issues most appropriately.

I. New York City's Racial and Ethnic Composition and Distribution

In general, New York City is racially and ethnically diverse. In 2012, the City's population was about 33 percent white, 23 percent black, 29 percent Hispanic, and 13 percent Asian. Accordingly, the Racial

Diversity Index (RDI) which estimates the chance that two randomly chosen people from New York City would be of different races,¹ was 0.74 in 2012.²

Like the City as a whole, many of our neighborhoods are quite diverse. A recent report from New York University's Furman Center for Real Estate and Urban Policy noted:

" . . . We classify neighborhoods based on their racial composition into four categories: single-race majority or highly homogenous, homogenous, integrated, and minority-mixed. . . . The share of single-race majority neighborhoods (where the proportion of any particular racial group is greater than 90%) in New York City was the lowest of any of the five largest cities at 5.1 percent.

The share of homogenous neighborhoods (where the proportion of any racial group is greater than 50% but lower than 90%) in New York City was 44.2 percent, similar to Los Angeles and Houston. The sum of the share of integrated neighborhoods (those where the share of both whites and at least one other racial group is greater than 20% and the share of minority-mixed neighborhoods (where the share of whites does not exceed 20% and at least two minority groups exceed 20%) accounts for 51 percent of New York City's neighborhoods. Thus, one of out of two residents in New York City lives in an integrated or minority-mixed neighborhood. . . ."

Nevertheless, too many of our neighborhoods do not reflect the racial and ethnic diversity of the City and remain homogenous. The de Blasio Administration has taken a strong stand that our housing policies will seek to further diversity, as illustrated by this quote from the *Housing New York* plan released in May 2014:

"Things must change

. . . Further, the affordable housing crisis is exacerbated by (and compounds) inequality. In some of the City's neighborhoods, median household income is as high as \$122,222, while in others, the median household income is only \$21,562. Often, both the highest income and the lowest income neighborhoods have little income diversity, while others are racially homogenous. Indeed, nearly half of the city's neighborhoods remain dominated by a single racial or ethnic group. The inequality and lack of diversity in many neighborhoods means that some families do not have access to the education, jobs, and other opportunities others enjoy. It also means that low income households often are unable to find homes in the neighborhood in which they would like to live.

. . . We must do more to ensure that all New Yorkers have a safe and affordable place to live, in neighborhoods that provide opportunities to succeed. . . ."

II. Avoiding Fair Housing Concerns in Implementing Community District Preferences

¹ We calculate the Racial Diversity Index (RDI) according to the following formula: $RDI = 1 - (P^2 \text{ Asian} + P^2 \text{ black} + P^2 \text{ Hispanic} + P^2 \text{ white})$. We use the categories of Asian (non-Hispanic), black (non-Hispanic), Hispanic, and white (non-Hispanic) but exclude people identifying as some other race or reporting more than one race from this calculation. Nonetheless, the four groups included accounted for 97.3 percent of New York City's population in 2012.

² See State of New York City's *Housing and Neighborhoods in 2013* (Furman Center for Real Estate and Urban Policy: 2014).

Community district preferences can be a very powerful tool in the City's efforts to affirmatively further fair housing. Many communities resist the siting of affordable or supportive housing within their neighborhoods, fearing that the greater density the housing brings will tax schools, transit, public safety and other vital neighborhood infrastructure and services. Those fears often are allayed when the communities are assured that the housing will provide benefits, in part, to neighborhood residents. Because so many of New York City's neighborhoods are threatened with rapidly increasing rents, the promise that new affordable housing will help existing residents of the community remain in the neighborhood is a powerful counter to many of the legitimate concerns that neighborhoods have about the changes that investment in new housing in the neighborhood may bring.

Critics of the community district preference system have expressed concern, however, that in some instances, the preferences might "lock in" the existing racial or ethnic majority in a neighborhood, and might make it more difficult for racial or ethnic groups not already represented in a community to move into the neighborhood.

To address those concerns, we have analyzed a variety of ways in which we might modify the community district preference to avoid any implication that the preference runs counter to our goal of "build[ing] a just, equitable, inclusive and prosperous city."³

A. Measuring the diversity of community districts

Traditionally, measures of segregation have focused on the dissimilarity index, which represents "a summary measure of the extent to which the distribution of any two groups (frequently racial or ethnic groups) differs across census tracts or block-groups."⁴ As noted above, however, New York City is made up of four major racial and ethnic groups, which complicates the analysis considerably. Researchers in New York accordingly have used the RDI to address that feature of New York City's neighborhoods, and to provide a neighborhood-level measure, rather than a measure that simply averages indices for individual census tracts or census blocks.

As noted above, the RDI measures the chance that any two residents of a specified geography will be of different races or ethnicities. New York City's RDI in 2012 was .74; the RDIs of individual community districts ranged from a low of .21 (BK 17: Flatbush, Brooklyn) to a high of .84 (QN 10: South Ozone Park and Howard Beach, Queens). The RDIs for all 59 community districts are arrayed in Appendix A. In brief, the groupings fall as follows:

| RDI | Number of Community Districts (cumulative) |
|-------|--|
| <.030 | 2 |
| <.04 | 4 |
| <.045 | 8 |
| <.05 | 17 |
| <.055 | 27 |
| <.060 | 37 |
| <.065 | 44 |

³ *Housing New York*, at p. 27.

⁴ AFFH Data Documentation, June 2013 draft, at 2 (available at http://www.huduser.org/portal/publications/pdf/FR-5173-P-01_AFFH_data_documentation.pdf)

| | |
|-------|----|
| <0.70 | 52 |
| <0.85 | 59 |

Logically, then, while we had talked about adjusting the preference for the ten least diverse community districts, it would make sense to depart from the usual community district preference rules either for the 4 CBs falling below 0.4, or for the 8 falling below 0.45.

B. Adjusting the community preference in less diverse community districts

There are several different approaches that could be used to adjust the community preferences for those community districts for which the preference might raise fair housing concerns. To disallow any community preference could be counter-productive, because the opposition to additional housing in the area, without any promise of local benefits, could make siting extraordinarily difficult. Further, in many of the areas, the threat of displacement from gentrification spurred in part by public investments in housing, if not accompanied by programs to allow existing residents to stay in the neighborhood, will itself raise fair housing concerns.

The preference could be lowered, however, say to 25 percent, rather than 50 percent. The percentage "taken away" from a less diverse community district could then be distributed either to contiguous community districts, to community districts whose boundaries fall within a fixed radius from the site (e.g., ½ mile) to the borough as a whole, or to the city as a whole. Or, the 50 percent preference normally given to the community district could be shared among contiguous community districts, community districts within a fixed radius of the site, or by the entire borough. Each of those systems poses different administrative challenges.

III. Next Steps

We would appreciate an opportunity to discuss whether this approach -- modifying the normal 50 percent community district preference for those community districts that fall under some threshold (such as 0.45), and distributing that preference instead to a wider group of community districts would address your concerns. I will call your office in the next few days to schedule a meeting.

We appreciate your willingness to work with us to find a way to avoid any implication that the community district preference that is so vital to our efforts to provide affordable housing might undermine our mutual goal of ensuring that all our efforts affirmatively further fair housing.

Sincerely,

Vicki Been

ACS DEMOGRAPHIC AND HOUSING ESTIMATES
New York City Community Boards
2008-2012 American Community Survey 5-Year Estimates

| Community Board* | Racial Diversity** | | |
|------------------|---|-------|----|
| | Index | Rank | |
| Manhattan 1 | Tribeca, Seaport/Civic Center, Financial Board, etc. | 0.496 | 44 |
| Manhattan 2 | Greenwich Village, West Village, NoHo, etc. | 0.411 | 54 |
| Manhattan 3 | Tompkins Square, East Village, Lower East Side, etc. | 0.716 | 4 |
| Manhattan 4 | Clinton, Chelsea | 0.580 | 24 |
| Manhattan 5 | Midtown | 0.495 | 46 |
| Manhattan 6 | Stuyvesant Town, Tudor City, Turtle Bay, etc. | 0.438 | 52 |
| Manhattan 7 | Manhattan Valley, Upper West Side, and Lincoln Square | 0.506 | 40 |
| Manhattan 8 | Upper East Side, Lenox Hill, Yorkville, etc. | 0.363 | 57 |
| Manhattan 9 | Hamilton Heights, Manhattanville, Morningside Heights, etc. | 0.711 | 5 |
| Manhattan 10 | Central Harlem | 0.569 | 27 |
| Manhattan 11 | East Harlem | 0.661 | 15 |
| Manhattan 12 | Inwood and Washington Heights | 0.467 | 48 |
| Bronx 1 | Mott Haven, Port Morris, Melrose | 0.432 | 53 |
| Bronx 2 | Hunts Point, Longwood, Morrisania | 0.408 | 55 |
| Bronx 3 | Crotona Park, Claremont Village, Concourse Village, etc. | 0.503 | 41 |
| Bronx 4 | Highbridge, Concourse, Mount Eden, etc. | 0.500 | 42 |
| Bronx 5 | Fordham, University Heights, Morris Heights, etc. | 0.457 | 51 |
| Bronx 6 | Belmont, Bathgate, West Farms, etc. | 0.499 | 43 |
| Bronx 7 | Norwood, University Heights, Jerome Park, etc. | 0.538 | 36 |
| Bronx 8 | Fieldston, Kingsbridge, Kingsbridge Heights, etc. | 0.643 | 17 |
| Bronx 9 | Parkchester, Unionport, Soundview, etc. | 0.553 | 32 |
| Bronx 10 | Co-op City, City Island, Spencer Estates, etc. | 0.699 | 8 |
| Bronx 11 | Allerton, Bronx Park East, Eastchester Gardens, etc. | 0.700 | 7 |
| Bronx 12 | Edenwald, Wakefield, Williamsbridge, etc. | 0.513 | 39 |
| Brooklyn 1 | Flushing Avenue, Williamsburg, Greenpoint, etc. | 0.546 | 34 |
| Brooklyn 2 | Brooklyn Heights, Fulton Mall, Boerum Hill, etc. | 0.684 | 11 |
| Brooklyn 3 | Bedford-Stuyvesant, Stuyvesant Heights, and Ocean Hill | 0.529 | 37 |
| Brooklyn 4 | Bushwick | 0.495 | 45 |
| Brooklyn 5 | East New York, Cypress Hills, Highland Park, etc. | 0.570 | 26 |
| Brooklyn 6 | Red Hook, Carroll Gardens, Park Slope, etc. | 0.575 | 25 |
| Brooklyn 7 | Sunset Park and Windsor Terrace | 0.682 | 12 |
| Brooklyn 8 | Crown Heights, Prospect Heights, and Weeksville | 0.560 | 29 |
| Brooklyn 9 | Crown Heights, Prospect Lefferts Gardens, and Wingate | 0.482 | 47 |
| Brooklyn 10 | Bay Ridge, Dyker Heights, and Fort Hamilton | 0.557 | 30 |
| Brooklyn 11 | Bath Beach, Gravesend, Mapleton, etc. | 0.617 | 21 |
| Brooklyn 12 | Boro Park, Kensington, Ocean Parkway, etc. | 0.517 | 38 |
| Brooklyn 13 | Coney Island, Brighton Beach, Bensonhurst, etc. | 0.598 | 23 |
| Brooklyn 14 | Flatbush, Midwood, Kensington, etc. | 0.696 | 9 |
| Brooklyn 15 | Sheepshead Bay, Manhattan Beach, Kings Bay, etc. | 0.459 | 50 |
| Brooklyn 16 | Brownsville and Ocean Hill | 0.372 | 56 |
| Brooklyn 17 | East Flatbush, Remsen Village, Farragut, etc. | 0.213 | 59 |
| Brooklyn 18 | Canarsie, Bergen Beach, Mill Basin, etc. | 0.555 | 31 |
| Queens 1 | Astoria, Old Astoria, Long Island City, etc. | 0.669 | 14 |

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| Queens 2 Astoria, Old Astoria, Long Island City, etc. | 0.687 | 10 |
| Queens 3 Jackson Heights, East Elmhurst, North Corona, etc. | 0.548 | 33 |
| Queens 4 Corona, Corona Heights, Elmhurst, etc. | 0.619 | 20 |
| Queens 5 Ridgewood, Glendale, Middle Village, etc. | 0.566 | 28 |
| Queens 6 Forest Hills and Rego Park | 0.608 | 22 |
| Queens 7 Flushing, Bay Terrace, College Point, etc. | 0.646 | 16 |
| Queens 8 Fresh Meadows, Cunningham Heights, Hilltop Village, etc. | 0.735 | 2 |
| Queens 9 Richmond Hill, Woodhaven, Ozone Park, etc. | 0.732 | 3 |
| Queens 10 Howard Beach, Ozone Park, South Ozone Park, etc. | 0.814 | 1 |
| Queens 11 Bayside, Douglaston, Little Neck, etc. | 0.629 | 18 |
| Queens 12 Jamaica, Hollis, St. Albans, etc. | 0.542 | 35 |
| Queens 13 Queens Village, Glen Oaks, New Hyde Park, etc. | 0.629 | 19 |
| Queens 14 Breezy Point, Belle Harbor, Broad Channel, etc. | 0.680 | 13 |
| Staten Island 1 Arlington, Castleton Corners, Clifton, etc. | 0.706 | 6 |
| Staten Island 2 Arrochar, Bloomfield, Bulls Heads, etc. | 0.466 | 49 |
| Staten Island 3 Annadale, Arden Heights, Bay Terrace, etc. | 0.280 | 58 |
| New York City-Citywide | 0.739 | |
| Manhattan | 0.676 | 3 |
| Bronx | 0.607 | 4 |
| Brooklyn | 0.718 | 2 |
| Queens | 0.763 | 1 |
| Staten Island | 0.544 | 5 |

*ACS census tract-level data are aggregated to the community board geographic area. Please note the geographies of the aggregated census tracts are not entirely coterminous with NYC community board boundaries, but represent a very close approximation. The data represented on this map is an approximation of the racial composition within community boards.

**The Index is calculated using the racial diversity index. (1 minus % of population that is White Non-Hispanic² minus % of population that is African American Non-Hispanic² minus % of population that is Asian Non-Hispanic² minus % of population that is Latino or Hispanic²) A score close to 0.75 means that the four main race/ethnicity groups (White Non-Hispanic, Black Non-Hispanic, Asian Non-Hispanic, and Hispanic or Latino) are equally distributed in a geographic area. Geographies with ratios closer to zero are the least diverse.

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