

Chapter 277. Affordable and Fair Housing Policy and Procedures¹

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Subchapter A. General Provisions for Housing Projects

277.001 Purpose/Intent of Chapter

To be added.

277.002 Affordable and Fair Housing Policy Values

The Travis County Commissioners Court (the Commissioners Court) will strengthen Travis County (the County) through the promotion of policy, allocation of resources and other related actions guided by the following values:

- (1) Promote a diverse community free from discrimination through increased opportunity, equity, and access to housing choice.

¹ Chapter 77 was adopted by Travis County Commissioners Court on February 27, 2018, Item 5. Chapter 77 was renumbered as Chapter 277 on June 1, 2018 (approved May 15, 2018, Item 7).

- (2) Recognize affordable housing as a community asset and strive for a diverse, plentiful, safe, decent, and geographically distributed housing stock for all income levels.
- (3) Use scarce County, State and Federal resources wisely, maximizing investment benefit and efficiency, and taking bold action to address the housing affordability crisis.
- (4) Plan across County departments and with our regional and community partners to promote better direction, outcomes, equity in decision making, innovation, and creativity.
- (5) Ensure compliance with Federal fair housing laws and County fair housing goals for all County systems, policies, planning and directives to promote housing choice and opportunity for all.
- (6) Foster the livability of all neighborhoods at every opportunity level by prioritizing access to open spaces, transit options, walking, biking, neighborhood services, and amenities.
- (7) Encourage sustainable development by using green and energy efficient building methods, preserving green space and protecting environmentally sensitive areas.
- (8) Protect our most vulnerable populations, through prioritization of investments to address their needs.
- (9) Eliminate the negative impacts of limited housing choice, including gentrification, so that residents can thrive economically, socially, physically and emotionally no matter where they live within the county.
- (10) Lower barriers for people with criminal histories to re-enter the community and successfully obtain housing and employment.
- (11) Improve conditions in areas of low opportunity so that all residents have access to quality schools, health services, healthy foods, transit, job centers, and other services.

277.003 Housing Policy Statements

- (a) The Travis County Commissioners Court will support the creation of housing in Travis County that is affordable to individuals and families earning a wide range of incomes – from those who experience a cost burden by spending more than 30% of their household income on housing costs to those who do not experience a cost burden by spending more than 30% of their household income on housing costs.
- (b) The Travis County Commissioners Court supports the use of long-term affordability mechanisms to create housing in Travis County that:
 - (1) is affordable to individuals and families earning a wide range of incomes,

- (2) is geographically dispersed throughout the County, and
 - (3) to the greatest extent possible, supports diverse housing types and mixed income neighborhoods.
- (c) The Commissioners Court will support the approval of housing projects that increase affordable housing opportunities for persons of low to moderate incomes in areas deemed appropriate by Travis County.
 - (d) The Commissioners Court will support the creation of community benefits as described in Travis County Code Chapter 481, Travis County Public Improvement District Policy and Procedure, section 481.003, that improve areas of lower opportunity or areas of minority racial, ethnic, and/or low income concentrations.
 - (e) The Commissioners Court will support the creation of housing for its most vulnerable populations. Further, Commissioners Court encourages housing options for all members of the community, including the development of housing that allows people with criminal histories to successfully re-enter the community.
 - (f) The Commissioners Court will comply with the Affirmatively Furthering Fair Housing requirements of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 42 United States Code. 3601-3619) when reviewing any housing policy, incentive, resource, support, or process and will consider racial, ethnic, and economic segregation patterns in a given census block group.

As a community eligible for the Community Development Block Grant (CDBG) Office, Travis County may not contribute to segregation patterns, but will instead seek to improve racial, ethnic, and economic balance through Affirmative Marketing, improving access to Opportunity, and other appropriate strategies.

Commissioners Court will comply with the Fair Housing Act, which prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and disability.

Commissioners Court will comply with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

Additionally, Commissioners Court will comply with:

- (1) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability in any program or activity receiving federal financial assistance; Section 109 of Title I of the Housing and Community Development Act of 1974, which prohibits discrimination on the basis of race, color, national origin, sex, or religion in programs

and activities receiving financial assistance from HUD's CDBG Program;

- (2) Title II of the Americans with Disability Act of 1990, which prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities as it relates to state and local public housing, housing assistance, and housing referrals; the Architectural Barriers Act of 1968, which requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 be accessible to and useable by handicapped persons;
- (3) The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance;
- (4) Executive Order 11063, which prohibits discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds; and
- (5) Executive Order 13166, which eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally assisted and federally conducted programs and activities.

277.004 Definitions

In this subchapter:

- (1) Affirmatively Furthering Fair Housing or Affirmatively Further Fair Housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

Specifically, "Affirmatively Furthering Fair Housing" means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

The duty to Affirmatively Further Fair Housing extends to all of a program participant's activities and programs relating to housing and urban development.

- (2) Affirmative Marketing means an outreach and marketing strategy to identify and reach populations least likely to apply for affordable housing within a specific geographic area and without the benefit of targeted outreach efforts.

- (3) Area Median Income or AMI mean the current area median income as established by the United States Department of Housing and Urban Development.
- (4) Affordable Housing means housing that does not create a cost burden.
- (5) Cost Burden means housing costs which are more than 30% of a household's income.
- (6) Diverse Housing Types means a balanced mix of housing options, including multi-family property, garden homes, condominiums, town homes, duplexes, tri-plexes, quad-plexes, and single-family detached homes.
- (7) Disparate Impact means an adverse effect resulting from a practice or standard that is neutral and non-discriminatory in its intention but, nonetheless, disproportionately affects individuals having a disability or belonging to a particular group based on a protected class.
- (8) Housing costs means rent or mortgage, property taxes, mortgage or renter insurance, PID assessments, homeowner association fees, and utility expenses.
- (9) Long-Term Affordability means a contractual or legal requirement for a housing product to remain affordable to a specific Area Median Family Income for the longest timeframe extending beyond the initial lease or purchase of the housing product to 99 years for homeownership and 40 years for rental property.
- (10) Low to Moderate Income means incomes at or below 80% of the Area Median Income as defined by The U.S. Department of Housing and Urban Development (HUD)
- (11) Mixed Income Housing means housing that includes products at a variety of price points and affordability ranging from 30% of the Area Median Income to 140% of Area Median Income and above.
- (12) Moderate to High Opportunity Area and High Opportunity Area mean a community as defined by the Kirwan Institute maps or their equivalent/replacement with a combination of
 - (A) good to excellent access to high-performing school, jobs, amenities, social and medical services, and transit,
 - (B) has low crime rates, and
 - (C) is free of environmental hazards.
- (13) Travis County Affordable Housing Policy Committee and Committee mean the County's inter-departmental group working on the development of Affordable Housing Policies that support the County's commitment to housing affordability and its obligation to Affirmatively Further Fair Housing.

- (14) Very Low to Low Opportunity Areas and Low Opportunity Areas mean a community as defined by the Kirwan Institute maps or their equivalent/replacement with a combination of:
- (A) poor to fair access to high performing schools, jobs, amenities, social and medical services, and transit;
 - (B) has moderate to high crime rates; and
 - (C) has environmental hazards within proximity to the area.

277.005 Applicability

To be added after the approved Affordable Housing Committee review process.

277.006 Affordable and Fair Housing Review Committee

To be added after the approved Affordable Housing Committee review process.

277.007 Pre-Application

To be added after the approved Affordable Housing Committee review process.

277.008 Affirmatively Furthering Fair Housing Review

To be added after the approved Affordable Housing Committee review process.

277.009 Application

To be added after the approved Affordable Housing Committee review process.

277.010 Housing Affordability

To be added after the approved Affordable Housing Committee review process.

277.011 Visitability Standards

To be added after the approved Affordable Housing Committee review process.

277.012 Affirmative Marketing

To be added after the approved Affordable Housing Committee review process.

[277.013 – 277.020 Reserved for Expansion]

Subchapter B: Resolutions of Support or and No Objection for Affordable Housing Properties Seeking Low Income Housing Tax Credits

277.021 Background and Purpose

- (a) This Subchapter establishes the process and parameters by which Commissioners Court will review each developer's request for a Resolution of No Objection or Resolution of Support (individually a Resolution and collectively, the Resolutions) with respect to the developer's application to the Texas Department of Housing and Community Affairs for low income housing tax credits.
- (b) Travis County is a Community Development Block Grant entitlement recipient and is required to Affirmatively Further Fair Housing.
- (c) The Texas Department of Housing and Community Affairs' Qualified Allocation Plan for the Low-Income Housing Tax Credit program requires municipalities and counties to ensure the projects comply with Fair Housing laws as stated in 277.003(f) and 277.021(d).
- (d) Section 10.204(4)(C) of Title 10 of the Texas Administrative Code states in part as follows: "In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds."

277.022 Authority for Subchapter B

- (a) HUD Entitlement Community: Affirmatively Furthering Fair Housing requirements of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619)
- (b) TDHCA's Requirements: Local Government Support & Consistency with Fair Housing Laws.
- (c) Section 11.9.(d)(1) of the 2017 the Qualified Allocation Plan (QAP) and Section 11.9.(d)(1) of the 2018 draft of the Qualified Allocation Plan (QAP).

277.023 Definitions

In this subchapter:

- (1) Affirmatively Furthering Fair Housing Review and AFFH mean a review completed as outlined in Section 277.008.
- (2) Fair Housing Choice means a community free from:

- (A) Any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin that restrict housing choices or the availability of housing choices.
 - (B) Any actions, omissions, or decisions that have the effect of restricting housing choices or the availability of housing choices on the basis of race, color, religion, sex, disability, familial status or national origin.
- (3) Fair Housing Screen means a review performed by the County of a property that evaluates, at a high level, whether or not a location Affirmatively Furthers Fair Housing.
 - (4) Public or non-profit partner means any Housing Finance Corporation or other local government corporation, whether affiliated with a municipality, county, housing authority or other entity, that is participating in the finance and ownership of the project. Alternately, a non-profit entity and/or Community Housing Development Corporation not affiliated with a developer that is participating in the finance and/or ownership of the project.
 - (5) Qualified Allocation Plan (QAP) means the TDHCA-approved document that established the procedures and requirements relating to an award or allocation of housing tax credits.
 - (6) Resolution of No Objection means a resolution from a Unit of Local Government (ULG), such as a city or county, that demonstrates the ULG has no objection to a proposed multifamily tax credit property.
 - (7) Resolution of Support means the resolution from a Unit of Local Government (ULG), such as a city or county, that demonstrates the ULG supports the proposed multifamily tax credit property.
 - (8) TDHCA means the Texas Department of Housing and Community Affairs.
 - (9) Vulnerable populations include, but are not limited to, those experiencing homelessness, youth aging out of foster care, families experiencing domestic violence, and elderly or disabled individuals.

277.024 Resolution of No Objection Fair Housing Screen

- (a) A developer and public or non-profit partner (together, an Applicant) seeking a Resolution of No Objection from Commissioners Court must submit a County-promulgated Request for Resolution of No Objection Fair Housing Screen form to Travis County's Community Development Block Grant (CDBG) Office at least 30 days prior to needing the resolution.
- (b) The Applicant must submit the following with its completed Fair Housing Screen form, which will be reviewed by the Transportation and Natural Resources Department to assess the site's suitability:

- (1) Information regarding any undesirable site features identified in 10 Texas Administration Code section 10.101, of the site and how any such features will be mitigated.
 - (2) Evidence of zoning of the site as required by 10 Texas Administration Code section 10.204(11).
 - (3) The Site Design and Development Feasibility Report required by 10 Texas Administration Code section 10.204(15).
 - (4) Information that demonstrates that the site is or will be located on a road accepted for maintenance by Travis County, the municipality in which the access road or site is located, or the Texas Department of Transportation.
 - (5) Information as to the safety of access to and exit from the site in times of flood or fire for ordinary and emergency vehicles demonstrating that access roads:
 - (A) will not cross an area having a high wildland fire protection rating determined in accordance with the National Fire Protection Association Bulletin NFPA 299, Protection of Life and Property from Wildfire, 1992;
 - (B) will not cross a special flood hazard area as identified by the Federal Insurance and Mitigation Administration of the Federal Emergency Management Agency in the most current Flood Insurance Study and accompanying Flood Insurance Rate Maps and flood boundary-floodway maps; and
 - (C) are of all-weather construction and have a width necessary for simultaneous ingress and egress of fire and emergency vehicles.
- (c) The CDBG Office may request additional information as needed to assist in the determination.
- (d) Any coordination with other entities must occur as outlined in 277.029 and in accordance with any applicable rules and statues.
- (e) The CDBG Office will determine if the proposed project is in compliance with the County's obligation to Affirmatively Further Fair Housing based on a standardized review which includes:
- (1) Review if the property is in an impacted area based on the most recent Analysis of Impediments to Fair Housing Choice;
 - (2) Review if the most recent Low to Moderate Income Data has changed for the area;
 - (3) Review if the most recent Race/Ethnicity Data has changed for the area;
 - (4) Review the 2012 Kirwan Map Opportunity Score designation or the map's equivalent/replacement;

- (5) Review of key opportunity factors to determine if opportunity may have changed; and
 - (6) Any other factors that may become available to assist in the determination.
- (f) The CDBG Office will communicate its Fair Housing Screen decision to the Applicant, the Commissioner in whose precinct the project is located, and the County Judge within ten business days of receiving the required information from the Applicant(s).
 - (g) If the project passes the Fair Housing screen, the CDBG Office will place the item on the agenda for Commissioners Court consideration as outlined in Section 277.035. The Commissioner where the project is located or the County Judge may sponsor the agenda item.
 - (h) If the project fails the Fair Housing screen, the CDBG Office will not place the item on the agenda for the Commissioners Court consideration. The Applicant may request reconsideration of the determination as described in 277.033.

277.025 Resolution of Support Affirmatively Furthering Fair Housing Review

An Applicant may request a Resolution of Support, with process and timeline to be determined by the CDBG Office and approved by Commissioners Court.

[277.026– 277.028 Reserved for Expansion]

277.029 Coordination with Other Municipalities

- (a) If any portion of the project is located within the Extraterritorial Jurisdiction of a municipality, the CDBG Office will coordinate its Fair Housing Screen or AFFH Review with the municipality, as appropriate.
- (b) If the County’s Analysis of Impediments to Fair Housing Choice covers the location of the property, the County will request for the review to be completed by the County prior to the municipality completing its review to help advance the County’s Fair Housing goals.
- (c) The County will provide a copy of the Fair Housing Screen or AFFH Review to the municipality.

[277.030 – 277.032 Reserved for Expansion]

277.033 Reconsideration of Fair Housing Screen Determination

- (a) If the Applicant(s) would like to request a reconsideration of the decision of the Fair Housing Screen or AFFH Review, they must submit a written request within ten (10) business days after the decision.

- (b) The Applicant's written request must include verifiable, relevant data, or data that the County requests that disputes the County's decision and demonstrates that the project will meet the County's fair housing goals and its duty to Affirmatively Further Fair Housing.
- (d) The CDBG Office will have thirty (30) days to determine whether to reverse its decision.
- (e) If the CDBG Office reverses its decision and passes the Fair Housing Screen or AFFH Review, as applicable, the CDBG Office will place the item on the agenda for the Commissioners Court consideration as outlined in 77.109. The Commissioner where the project is located or the County Judge may sponsor the agenda item.
- (f) If the CDBG Office upholds its decision, the CDBG Office will not place the item on the agenda for Commissioners Court consideration. Should the Commissioners Court have an interest in moving forward with the Resolution despite a staff recommendation to the contrary, then the Commissioner, in whose precinct the project is located, or the County Judge may sponsor the agenda request for the Resolution.

277.034 Commissioner Sponsorship

- (a) An Applicant may discuss the potential project with individual members of the Commissioners Court before or after the CDBG Office's Fair Housing Screen or AFFH Review.
- (b) For projects that pass the CDBG Office's Fair Housing Screen or AFFH Review, the CDBG Office will request the Commissioner, in whose precinct the project is located, to sponsor any agenda item related to the Fair Housing or AFFH Review. If the Commissioner chooses not to sponsor the item, the CDBG Office will request sponsorship from the County Judge.
- (c) For projects that fail the CDBG Office's Fair Housing Screen or AFFH Review and any subsequent Reconsideration, the Applicant may request the County Judge or the Commissioner, in whose precinct the project is located, to sponsor an agenda item to have the Resolution considered.
- (d) If the Applicant cannot find sponsorship of the item by a Commissioner or the County Judge, the Resolution will not be heard by the Commissioners Court.

277.035 Commissioners Court Approval Process

- (a) For projects that pass the Fair Housing Screen or AFFH Review, the CDBG Office will make the agenda request. The Commissioners Court or County staff may require representatives of the Applicant appear in Court to present the property and proposed Resolution and respond to questions.
- (b) For projects that fail the Fair Housing Screen or AFFH Review and a subsequent Reconsideration, the Applicant will work with the Agenda Item

Sponsor to complete the agenda item paperwork and meet the necessary deadlines. The Commissioners Court or County staff may require representatives from the Applicant to appear in Court to present the project and proposed Resolution and respond to questions.

- (c) The CDBG Office will provide a copy of its report, provide an overview and be available to answer any questions from the Commissioners or County Judge during consideration of the proposed Resolution.