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CASHAUNA HILL

November 23, 2020

Gretna City Council
740 2nd Street
Gretna, LA 7005

Re: Moratorium on Multifamily Housing

Dear Council Members,

I am the Legal Director of the Louisiana Fair Housing Action Center (“LaFHAC”), a non-profit organization dedicated to eradicating housing discrimination in Louisiana. As part of that mission, we work to ensure that municipal land use and zoning decisions comport with the anti-discrimination mandates of the federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (the “Act”) and other civil rights laws.

Our organization is concerned that the City of Gretna’s July 8, 2020 adoption of a moratorium on the construction of multifamily housing may violate the Act. The moratorium will significantly reduce housing opportunity for renters and low-income individuals in the city of Gretna, disproportionately affecting African Americans who are statistically more likely to live in rental and affordable housing. In addition, because African Americans are disproportionately more likely to be adversely affected by COVID-19, we find the City’s decision to reduce housing opportunity during one of the most significant health and financial crises of our time to be particularly troublesome.

The Fair Housing Act expressly prohibits discrimination on the basis of race, color, religion, sex, familial status, disability, and national origin. 42 U.S.C. § 3604(a). It has been interpreted to prohibit municipalities from using their zoning powers in a manner that excludes housing for a group of people on the basis of one of the enumerated classifications. The Act is violated even



when a seemingly neutral zoning policy has a discriminatory effect on a particular protected class or causes harm to a community through the perpetuation of segregation. *See. Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–67 (1977).

We understand that Gretna’s moratorium was passed following discussions with developers who proposed to renovate the former Days Inn on Westbank Expressway into a mixed use development. The proposed Cypress Village would provide 141 units of affordable and market rate rental housing to the community. The moratorium has effectively blocked this development, predictably causing a disproportionate impact on African American households.

Municipalities have repeatedly been found liable for violating the Fair Housing Act when their land use decisions have the effect of halting affordable housing development – either because the deprivation of the affordable housing disproportionately deprives racial minorities of needed housing opportunities, or because discriminatory intent motivated the denial (even if only in part). *Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish*, 641 F. Supp. 2d 563 (E.D. La. 2009) (zoning decision that effectively reduces the amount of multifamily housing violates the Fair Housing Act where minorities are overrepresented in the pool of local renters); *Dews v. Town of Sunnyvale*, 109 F. Supp. 2d 526, 563 (N.D. Tex. 2000) (“The Fifth Circuit has established that plaintiffs suing under the Fair Housing Act may establish liability by showing intentional discrimination or by showing that the defendant’s acts have a significant discriminatory effect.”); *see also, e.g., Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581 (2d Cir. 2016); *Summerchase Ltd. P’ship I v. City of Gonzales*, 970 F. Supp. 522 (M.D. La. 1997). In such cases, courts consider statistical evidence of a discriminatory effect when evaluating whether a municipality’s actions violate the Fair Housing Act. *See GNOFHAC*, 641 F. Supp. 2d at 578; *Dews*, 109 F. Supp. 2d at 565 (citing *Huntington Branch, N.A.A.C.P.*, 844 F.2d at 937, and *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)).

Here, statistical evidence demonstrates that Gretna’s moratorium has an outsized effect on African Americans. Black households are 87% more likely to be eligible to live in Cypress Villages affordable units (80% AMI) than whites. In light of this stark disparity, it is our position that the moratorium likely has a prohibited discriminatory effect.

The discriminatory impact of Gretna’s decision is especially concerning given the Jefferson HOME Consortium’s 2017 Assessment of Fair Housing, which acknowledges that land use decisions that reduce the availability of multi-family housing has a disproportionate impact on people of color and that a lack of affordable housing is a contributing factor to racial segregation in Jefferson Parish. *See Assessment of Fair Housing (AFH) 2017 for the Jefferson HOME Consortium*, (October 4, 2017) at 51-52; 58. The Parish has, accordingly, expressed a commitment to “promot[ing] a diverse range of housing opportunities, by type, size, density, cost, and location, consistent with demand and need, including identifying high opportunity areas for both private and

public investments.” *Id.* at 145-56. To meet that goal, it identified a strategy of “increas[ing] flexibility for clustering residential and mixed-use development within existing zoning districts or targeted neighborhoods.” Gretna’s moratorium is certainly at odds with that goal.

Our organization has a history of successfully challenging municipal zoning decisions that limit rental housing opportunity and disproportionately impact communities of color. In October of 2006, Wallace Rodriguez and LaFHAC (then the Greater New Orleans Fair Housing Action Center) filed a lawsuit against St. Bernard Parish and its Council alleging that their zoning decisions, including an ordinance that placed a twelve-month moratorium on new construction of multifamily buildings, violated the Act because they were enacted with discriminatory intent and had a discriminatory impact on African Americans. After multiple court decisions favorable to plaintiffs, the Parish paid \$1.8 million to settle the lawsuit. A related lawsuit filed in 2012 alleging that that the Parish’s permitting process discriminatorily impacted African Americans resulted in the Parish paying an additional \$2.5 million in settlement funds.

In 2013, LaFHAC successfully resolved an administrative action against Jefferson Parish which challenged numerous post-Katrina actions by the Parish and subrecipients of its federal housing dollars. Among the actions LaFHAC challenged were the Parish’s blocking of the development of low-income housing tax credit properties and a one-year moratorium on multi-family housing passed by the City of Kenner. The resulting impact was a reduction of affordable housing in the Parish, the effects of which were felt most harshly by African Americans. *See, Stacy E. Seicshnaydre, How Government Housing Perpetuates Racial Segregation: Lessons from Post-Katrina New Orleans*, 60 *Cath. U. L. Rev.* 661 (2011), available at: <https://scholarship.law.edu/lawreview/vol60/iss3/5>.

Should Gretna’s moratorium remain in effect here, LaFHAC is prepared to initiate an investigation to confirm that a violation has occurred and to determine whether enforcement of the Fair Housing Act through all available remedies should proceed.

Further, the Department of Housing and Urban Development and the United States Department of Justice, which are charged with responsibility for enforcing the Act, have made clear that municipalities found liable for violating the Act may forfeit their right to receive Community Development Block Grant Funds, and these federal agencies have not hesitated to initiate litigation against cities that have blocked affordable housing for reasons that appear to violate the Fair Housing Act. *See, e.g., Complaint filed in United States v. City of Pooler*, C.A. No. CV401-263 (S.D. Ga. Nov. 13, 2001).

In sum, we urge you to immediately lift the moratorium and allow the development of multi-family housing to continue. Given the financial and housing crises resulting from COVID-19, development of much-needed rental and affordable housing is more important than ever.

Thank you for your consideration of this important matter.

Sincerely,



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cc

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