

Date: 04 February 2011

To: Galveston City Council

CC: Mayor Joe Jaworski, the GHA Commissioners, and (see list at end of letter)

Re: Repayment of Federal Funds?

The **threat of withholding recovery funds** from this city, if it did not obey the unlawful Conciliation Agreement, forced many on this Council to act against their better judgment when it came to rebuilding Public Housing.

The **threat of being forced to repay recovery funds**, if the City violates the Fair Housing Act, should give this Council pause, and motivate it to take the necessary steps to prevent any violations!

Is there a need for City Council to provide **oversight to the process of rebuilding Public Housing at this time?**

Absolutely!

This Council is scheduled to review the plans for every project proposed by the GHA, but by that time; it **may be too late!**

The Analysis of Impediments, that was just released, clearly identifies the **primary risk to the City** that must be addressed by this Council.

*“Given the potential for **increase in Fair Housing enforcement action by federal and state agencies** and private organizations an ongoing fair housing testing program for areas that receive federal housing and community development funds will be*

*beneficial to protect state agencies and sub-recipients from potential repayment.” (State AI Page 180)*

Does this mean that if a city, like Galveston, is found to be in violation of the Fair Housing Act that it will be forced to repay all the federal funds that it received for housing; including Public Housing?

Or, does this mean that if a city is found to be in violation of the Fair Housing Act that it will be forced to repay all the federal funds that it received for housing and non-housing uses?

We are not asking this Council to take sides in our dispute with the Mayor over Public Housing, or even to take a vote on whether you favor rebuilding 569 units of Public Housing; we are asking this Council to take the necessary steps to protect the City from the possibility of being forced to repay federal funding due to violations of the Fair Housing Act. If this happened, it would be a financial disaster!

This Council can easily protect the City from this hazard by demanding that the proper site selection methods be employed for any additional Public Housing built in this city. Unfortunately, it appears that the Mayor believes that the Conciliation Agreement allows him, and his GHA Board, to build additional Public Housing in any location in the City, even if many of the locations will violate the Fair Housing Act by increasing the concentration of low-income racial and/or ethnic minorities, and/or it places Public Housing residents in low-opportunity neighborhoods.

**Nothing could be further from the truth!**

The Fair Housing Act and the Civil Rights Act clearly supersede any explicit or implied directives or required actions derived from the Conciliation Agreement. Any attempt to justify violations of these Acts by pointing to the Conciliation Agreement will not be accepted by HUD, the TDHCA, the TDRA, or a federal court!

During the recent Council workshop with the GHA, Executive Director Harish Krishnarao said that any new building must be done according to the stringent requirements contained in CFR 941.202. He clearly made no claims that GHA was exempt from federal laws or regulations due to the Conciliation Agreement.

CFR 941.202 states in part, “(c)(1)The site for new construction projects must *not be located in: (i) An area of minority concentration...*” and “The site must promote greater choice of housing opportunities and *avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.*”

[http://edocket.access.gpo.gov/cfr\\_2009/aprqtr/pdf/24cfr941.202.pdf](http://edocket.access.gpo.gov/cfr_2009/aprqtr/pdf/24cfr941.202.pdf)

This begs the question as to why the GHA has shown no evidence, so far, that it is selecting sites using the proper methods.

The State Analysis of Impediments clearly states that:  
“...no disaster recovery funds could be expended on projects that do not meet new and *more stringent Affirmatively Furthering Fair Housing rules.*” (Page 11)

“Jurisdictions should ensure that their practices do not promote concentrations of protected classes,...” (Page 175)

“... should review them to determine if *the plan promotes racial concentrations ...*” (Page 176)

“...the report identifies a limited availability of safe, quality, affordable housing, especially *in high opportunity areas,...*” (Page 15)

“...*opportunity indicators including access to high-quality public education, concentration of poverty, racial segregation, environmental quality, access to health care, access to sustainable jobs, and crime rates...*” P175

Of course, both the Thompson v HUD and Westchester County cases spell out the specific requirements to be used in making lawful site selections much more clearly than the State AI.  
<http://www.galvestonogp.org/GHA/Location-Of-Public-Housing-P3.html>

Professor John A. Powell, Executive director of the Kirwan Institute, was one of the key expert witnesses in Thompson v HUD. As a public service, [the Kirwan Institute has offered to do a Communities of Opportunity study for Galveston County](#) that would objectively and clearly identify acceptable locations for Public Housing, but the GHA has hired real estate companies to [start buying property BEFORE this study can be completed; placing the City in financial jeopardy.](#)  
<http://galvestondailynews.com/story/206794>

Council must exercise its fiduciary responsibility by [halting any property acquisition until the Kirwan study can be used to properly guide it.](#)

State Public Housing law does not allow for the direct control of the GHA Board by City Council, but City Council is ultimately responsible to see that the City, including all of its agencies, obeys State and federal laws. One way to do this may be found in the GHA Bylaws that state:

["Termination of Commissioners shall be conducted in accordance with the procedures in Texas Government Code Section 392."](#)

§ 392.041. REMOVAL OF A COMMISSIONER.

[\(a\) The mayor may remove a commissioner of a municipal housing authority for inefficiency, neglect of duty, or misconduct in office.](#)

<http://law.onecle.com/texas/local-government/392.041.00.html>

Failing to employ the Communities of Opportunity approach to identify acceptable locations for Public Housing, thereby

exposing the City to the possibility of being forced to repay millions of dollars in federal funds **should qualify as “neglect of duty” and/or “misconduct in office”**.

We strongly urge City Council to place this matter on the agenda for the next meeting.

Best regards,

David Stanowski  
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