



Advancing Justice
Housing | Health | Children & Youth

October 27, 2020

Mayor Rich Tran and Milpitas City Council
Milpitas City Hall
455 E. Calaveras Boulevard
Milpitas, CA 95035

RE: Milpitas Project HomeKey

Dear Mayor Tran and City Council:

We write to demand that Milpitas stop insisting that the County of Santa Clara relocate the proposed Project Homekey site at the Extended Stay America in Milpitas and to cease and desist from threatening to sue the County of Santa Clara and State of California if they refuse to acquiesce to the City's demand. It is clear that this decision is based on exaggerated, prejudiced, and unfounded claims that the individuals moving into this housing will disproportionately be those with mental health disabilities and/or substance abuse disorders, and that the presence of such individuals will bring violence, crime, and pollution to Milpitas. This decision violates both state and federal anti-discrimination law and, as such, cannot be sustained.

As discussed below in detail, the decision violates state and federal fair housing law by "making housing unavailable" because of a homeless individual's membership in a protected class: disability.¹ Finally, your actions violate Milpitas' obligations under its own Housing Element and its responsibilities under the Housing Accountability Act.²

A. Factual Background

Project Homekey is a state program to expedite housing projects individuals experiencing homelessness during the COVID-19 pandemic.³ In September, Santa Clara County received \$29.2 million in funds from the State of California and identified the Extended Stay America

¹ See Federal Fair Housing Amendments Act (FHAA), 42 U.S.C. § 3604(a); *see also* California Fair Employment and Housing Act (FEHA), Gov. Code § 12955 *et seq.* Both FHAA and FEHA define "Handicap" as (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) *being regarded as having such an impairment.*" (emphasis added). 42 USC § 3602; Cal. Gov't Code § 12925.

² See Cal. Gov't Code § 65589.5 prohibiting a local agency from disapproving, or conditioning approval in a manner than renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based upon substantial evidence.

³ Geha, Joseph, "Milpitas City Council Pushing Santa Clara County to Halt Homeless Housing Project," October 19, 2020 available at <<https://www.mercurynews.com/2020/10/19/milpitas-city-council-pushing-santa-clara-county-to-halt-homeless-housing-project/>>

located at 1100 Hillview Court as a Project Homekey site.⁴ Under this grant, motel rooms at the Extended Stay America would be converted into permanent supportive housing for the homeless.⁵ Supportive services, including mental health services and medical services, would also be provided to the residents to ensure a successful transition to more permanent housing.

After initially supporting the project, Milpitas City Council began receiving public comments in opposition to the project. Many of these comments are based upon erroneous, harmful stereotypes that unhoused individuals all have severe mental health disabilities or substance abuse disorders, and cause crime. For example, an online petition opposed to the Project Homekey plan states, “We are concerned about relocating individuals from outside our city here. We are concerned about those with criminal records or drug use.”⁶ Many of the public comments at the City Council meeting also emphasized negative, fallacious stereotypes about homeless individuals.⁷

In response to this public pressure, the City sent a letter to the County demanding it halt any action on establishment of the Project Homekey site, and advised the County it is considering legal action to enjoin the implementation of the Project Homekey site, despite the fact there are no other overnight shelters in Milpitas that could house these individuals during a global pandemic.⁸

B. Legal Analysis

1. The City’s Attempt to Stop the Establishment of a Project Homekey Site in Milpitas Violates State and Federal Fair Housing Laws

When Congress enacted the Fair Housing Amendments Act in 1988, it intended to end the exclusion of people with disabilities from the American mainstream. The House Report on the Act declared:

Prohibiting discrimination against individuals with handicaps is a major step in changing the stereotypes that have served to exclude them from American life. These persons have been denied housing because of misperceptions, ignorance, and outright prejudice. The Fair Housing Amendments Act . . . is a clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.

⁴ Id.

⁵ Id.

⁶ <https://www.change.org/p/milpitas-city-council-public-input-needed-on-project-homekey-in-milpitas?redirect=false>

⁷ Geha, Joseph, “Milpitas City Council Pushing Santa Clara County to Halt Homeless Housing Project,” October 19, 2020 available at <<https://www.mercurynews.com/2020/10/19/milpitas-city-council-pushing-santa-clara-county-to-halt-homeless-housing-project/>>

⁸ Id.

H.R. Rep. No. 711, 100th Cong., 2d Sess. 18 (1988) (House Report).

The actions to stop the establishment of a Project Homekey site in Milpitas violate the FHAA, as they are based solely on stereotypes of homeless individuals, especially those who live with or are perceived to have mental health disabilities. The Fair Housing Act specifically states that “it shall be unlawful [t]o make unavailable or deny . . . a dwelling to any person” because of their membership in a protected class, including disability and race.⁹ This provision applies equally to municipalities and land use policies that have the effect of making housing unavailable to individuals based on a protected class.¹⁰

Courts have found that the presence of community animus based solely on stereotypes generally associated with a protected class can support a finding of discriminatory motive by government officials in enacting a housing policy, even if the officials do not personally hold such views.¹¹ Importantly, the 9th Circuit recently found that the City of Yuma’s denial of a residential zoning change violated the federal Fair Housing Act after the community raised opposition to the rezoning based on discriminatory stereotypes of Yuma’s Hispanic neighborhoods (such as high-crime, lower property values, number of children who would live at the development).¹² The 9th Circuit also found that while none of the statements made by those opposing the development expressly referred to race, they raised concerns about discriminatory purpose, and that coded language may have been used to demonstrate the intent of government officials, even though the officials were not the ones to making the bigoted comments.¹³

In this case, the city government is basing its decision to stop implementation of the Project Homekey site in the City on unfounded stereotypes that the individuals that will be housed at the site have mental health disabilities and substance abuse disorders, and that their

⁹ See Fair Housing Amendments Act, 42 USC § 3604(a). The prohibition on “otherwise making unavailable or denying housing” has been interpreted as reaching all discriminatory housing practices that make housing more difficult to obtain because of disability. See *United States v. Youritan Construction Co.*, 370 F. Supp. 643, 648 (N.D. Cal. 1973), *aff’d as modified*, 509 F.2d 623 (9th Cir. 1975).

¹⁰ *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 58 F.2d 1283 (7th Cir. 1977); *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988.) Would add this as a cite: <https://www.justice.gov/crt/page/file/909956/download>

¹¹ See, *Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493 (9th Cir. 2016) citing *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1997); see, also, *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 425 (2d Cir. 1995) (plaintiff alleging a disparate-treatment claim under the FHA “can establish a prima facie case by showing that animus against the protected group was a significant factor in the position taken by the municipal decision-makers themselves or by those to whom the decision-makers were knowingly responsive.” (internal quotation marks omitted)(emphasis added).

¹² See, *Ave. 6E Invs., LLC*, *Supra* 818 F.3d 493, 505.

¹³ *Id.*; see also *Galdamex v. Potter*, 415 F.3d 1015, 1024 (9th Cir. 2005)(there are no talismanic expressions which must be involved as a condition-precendent to the application of the laws to protect against discrimination. The words themselves are only relevant for what they reveal-the intent of the speaker.) See, also, *In Mhany Mgmt. v. Cnty. of Nassau*, 819 F.3d 581, 606, 608 (2d Cir. 2016) the court considered the discussion at public hearings and a flyer circulated throughout the community showed that citizen opposition, though not overtly racist, was directed at a potential influx of poor, minority residents. “At the meeting . . . the predominantly white audience overflowed the room. The discussion was emotionally charged, with frequent references to the effect that subsidized housing would have on the “character” of the neighborhood. The final speaker from the audience . . . stated that the Bronx had been ruined when blacks moved there and that he supported the condominium proposal because he did not want the same thing to happen in Yonkers.

presence will lead to increased crime in the community. The Mayor questioned whether “psychotic” individuals will live at Project Homekey, using a derogatory term for individuals with severe mental health disabilities.¹⁴ This demonstrates that the government’s decision was due to officials’ animus, solely based on stereotypes related to individuals with mental health disabilities, violating state and federal fair housing law. Additionally, Milpitas’ actions likely violate its obligation to affirmatively further fair housing to ensure that the City is free from segregation.¹⁵ Finally, Milpitas’ decision to fight this project also runs afoul of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.¹⁶

2. The City’s Attempt to Stop the Project Homekey Site Violates the Housing Accountability Act

California’s Housing Accountability Act limits the government’s ability to deny emergency shelters, transitional housing, or supportive housing when a City has not met the

¹⁴ See, Geha, Joseph, Supra, “Milpitas City Council Pushing Santa Clara County to Halt Homeless Housing Project,” October 19, 2020 available at <<https://www.mercurynews.com/2020/10/19/milpitas-city-council-pushing-santa-clara-county-to-halt-homeless-housing-project/>>. Moreover, on his Facebook page, Mayor Tran also posted “The proposed homeless housing project is right across the street from the biggest liquor store in Milpitas — BevMo!. No disrespect.” See <https://www.facebook.com/MayorRichTran>. We note that Alcoholism and past drug addiction are covered disabilities under anti-discrimination laws. 24 C.F.R. § 100.201 (“mental health disability includes...any drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism”; see also *Oxford Invs., L.P. v. City of Phila.*, 21 F. Supp. 3d 442, 454 (E.D. Pa 2014).

¹⁵ Fair housing laws also place an affirmative duty on local governments to take affirmative steps to combat discrimination, “All executive departments and agencies (including cities) shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of the Fair Housing Act.” 42 USC § 3608. The City of Milpitas is a recipient of federal Community Development Block Grant Funds and is therefore required to administer all of its programs related to housing (including planning and zoning) in a manner to further the purposes of the Fair Housing Act, which is to end segregation and allow individuals the opportunity to live in the community (and housing) of their choice. Specifically, the obligation to affirmatively further fair housing requires the City of Milpitas to ...overcome barriers to fair housing choice, which includes eliminating segregation and creating access to opportunity areas; see also Cal. Gov. Code 8899.50.

¹⁶ American’s with Disabilities Act (ADA) 42 U.S.C. § 12132 provides that “[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity; Section 504 of the Rehabilitation Act prohibits discrimination against disabled individuals by municipalities that receive federal financial assistance, such as funds Milpitas receives from the federal Community Development Block Grant program. 29 U.S.C. § 794(a). The regulations promulgated by HUD implementing Section 504 prohibits Milpitas from providing disabled individuals “any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others” or “limit[ing] a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other qualified individuals receiving the housing, aid, benefit, or service,” 24 C.F.R. §§ 8.4(b)(1)(ii). Both the ADA, 42 USC §12102 and Section 504 of the Rehabilitation Act, 24 CFR § 104.3 defines disability “any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.” Section 504 also defines what being regarded having an impairment means. A person is regarded as have a disability “that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.”

requisite need for emergency shelter.¹⁷ The Act specifically states that a jurisdiction shall not disapprove of an emergency shelter project unless it makes a written finding that it meets a specific and permissible exception and provides substantial evidence to support that finding.¹⁸

Because Milpitas has *no* overnight shelters, it cannot claim it has met the need for emergency shelter.¹⁹ The City has failed to promulgate any written finding on the matter and cannot meet any of the stipulated exceptions under the Housing Accountability Act.²⁰ Therefore, Milpitas must cease and desist from taking any action to stop the establishment of the proposed Project Homekey site.

3. The City's Attempt to Stop the Establishment of a Project Homekey Site in Milpitas' Violates the City's Housing Element

Milpitas has no overnight shelters, and homeless individuals in Milpitas must travel to San Jose to find shelter.²¹ Yet, Milpitas' Housing Element requires it to facilitate the development of emergency shelters.²² Per the Milpitas municipal code, the government's decisions regarding land use must be consistent with the City's Housing Element.²³ The City Council's threats to take legal action to stop the development of the Project Homekey site therefore contradicts its mandate under the Housing Element. To maintain compliance with municipal law, Milpitas must not interfere with the County's plan to turn the Extended Stay America into a Project Homekey site.

¹⁷ 65589.5

¹⁸ 65589.5(d)

¹⁹ Housing Element, 50.

²⁰ See *Honchariw v. County of Stanislaus*, 200 Cal.App.4th 1066, 1068-1069 (2011)(A city can only deny a project if there is a "specific adverse impact" to public health & safety that can't be mitigated in any other way. (Section 65589.5(j); see also the purpose of the statute is to limit the ability of local governments to "reject or make infeasible housing developments ... without a thorough analysis of the economic, social, and environmental effects of the action" (§ 65589.5, subd. (b).) Subdivision (j) of the statute provides that "[w]hen a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete," a local agency which "proposes to disapprove the project ... shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that ... [t]he housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved ..." and "(2) [t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact ... other than the disapproval of the housing development project ... ").

²¹ Milpitas Housing Element, 50.

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjiKXipsvsAhVQuZ4KHVTRC1AQFjAAegQIARAC&url=http%3A%2F%2Fwww.ci.milpitas.ca.gov%2F_pdfs%2FAdoptedHousingElement2015-2023.pdf&usg=AOvVaw3AvRA3gqRUZGvNMFyBBnwr

²² Program 4.2: The City will continue to facilitate the development of emergency and transitional housing through financial and/or other incentives.

²³ Government Code 665300.5, 65860. See, e.g., *Gov't Code §§ 65300.5, 65860; Neighborhood Action Grp. v. Cty. of Calaveras*, 156 Cal. App. 3d 1176, 1184 (1984) ("permit action taken without compliance with the hierarchy of land use laws is ultra vires as to any defect implicated by the uses sought by the permit."); *Friends of B Street v. City of Hayward*, 106 Cal.App.3d 988, 998 (1980) (development decisions must be consistent with general plan and its elements).

Should Milpitas take legal action against the County of Santa Clara to block the development of the Project Homekey site at the Extended Stay America in Milpitas, the Law Foundation will consider intervening on behalf of the unhoused community. Should you wish to discuss this further, please contact me at Nadia.aziz@lawfoundation.org or at (408) 280-2453. Thank you for your attention and consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Nadia', written in a cursive style.

Nadia Aziz, Directing Attorney
Annette D. Kirkham, Senior Staff Attorney
Law Foundation of Silicon Valley

CC:

Christopher J. Diaz, Milpitas City Attorney
Consuelo Hernandez, Santa Clara County Office of Supportive Housing
James Williams, County Counsel, Santa Clara County