

## Fair Housing Complaint: HUD Form 903

### I. Preliminary Information

#### Complainants:

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Representing the NAACP and Texas Housers:

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#### Other aggrieved persons:

Other aggrieved persons are Black and Hispanic residents of neighborhoods in east and north Lubbock including, but not limited to, Chatman Hill, Dunbar-Manhattan Heights, Parkway-Cherry Point, Copper Rawlings, Yellow House Canyon, and Guadalupe, Jackson-Mahon, and Arnett-Benson. Black and Hispanic residents in these majority Black and Hispanic neighborhoods are discriminated against because the City of Lubbock's comprehensive plan concentrates industrial zoning in and around these neighborhoods, but not in neighborhoods

which are majority white. Additionally, Black and Hispanic residents were denied adequate participation in the City of Lubbock's Analysis of Impediment to Fair Housing and Consolidated Plan for the 2019-2023 grant period.

**The following is alleged to have occurred or is about to occur:**

- The City of Lubbock has discriminated by making housing unavailable under 42 U.S.C. § 3604(a).
- The City of Lubbock has discriminated in provision of services in connection with a dwelling under 42 U.S.C. § 3604(b) and 42 U.S.C. § 3601 et seq.
- The City of Lubbock falsely certified that it is affirmatively further fair housing under 42 U.S.C § 3608 and related federal statutes and regulations.
- The City of Lubbock has discriminated under 42 U.S.C. § 2000d and 24 C.F.R. § 91.105 by denying participation in, denial of benefits of, and discrimination under federally assisted programs on the ground of race, color, or national origin.
- The City of Lubbock has engaged, and continues to engage, in a pattern and practice of denying persons their rights under the Fair Housing Act on the basis of race, color, or national origin that should be referred to the Department of Justice for enforcement under 42 U.S.C. §3614.

**The alleged violation occurred because of:**

Race, color, and national origin.

**Address or location of where the discrimination occurred:**

Lubbock, Texas

**The last act(s) of discrimination occurred:**

On December 17, 2018, the City of Lubbock City Council passed Ordinance #2018-O0131 and adopted the city's most recent comprehensive land use plan, Plan Lubbock 2040 ("2040 Plan"). The City's actions are discriminatory because Plan Lubbock 2040 concentrates industrial zoning in and around majority Black and Hispanic neighborhoods. The complaint has been filed within the one year of the date above pursuant to 42 U.S.C. 3610(a). However, because the City of Lubbock has a long-term pattern and practice of discriminatory zoning and land use decisions, and will continue to rely on the discriminatory 2040 Plan to make future land use decisions, the violation is continuous and ongoing.

On July 22, 2019, the City of Lubbock, in the 2019 Consolidated Plan, failed to truthfully certify that it was affirmatively furthering fair housing (24 CFR §91.225(a)(1)), that it was in full compliance with the citizen participation requirements at §24 CFR 91.105 (24 CFR §91.225(b)(1-2)), and that it was in compliance with anti-discrimination laws (24 CFR §91.225(b)(6) . The complaint has been filed within the one year of that dates above pursuant to 42 U.S.C. 3610(a). However, because HUD will continue to rely on the City of Lubbock's AFFH certification as it distributes federal housing funds in the future, the violation is continuous.

## **Respondents:**

The City of Lubbock, Texas

## **II. Introduction**

We file this Fair Housing Complaint to address long-standing fair housing and civil rights violations by the City of Lubbock (City). For nearly one-hundred years, The City of Lubbock has discriminated against Black and Hispanic citizens by passing zoning laws which disproportionately concentrated industrial zoning and environmental hazards in and around neighborhoods of color. Recently, the city took new actions that, if not corrected, will continue this racist practice for the next one-hundred years. Further, the City is unable to truthfully certify that it is in compliance with the requirements of 24 CFR §91.226 and its statutory obligation to affirmatively further fair housing (AFFH). We ask HUD for immediate corrective action.

The complainants in this case are Chapter #6198 of the National Association for the Advancement of Colored People based in Lubbock, Texas (“Lubbock NAACP”) and Texas Housers.

The Lubbock NAACP works to secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and to ensure the health and well-being of all who call the Lubbock area home. It includes in its membership residents of neighborhoods in the east side of Lubbock who are African American.

Texas Housers is a 501(c)(3) nonprofit corporation that has worked in Texas with residents and leaders in low-income neighborhoods of color to achieve affordable, fair housing and open communities for over 30 years. Texas Housers has worked in Lubbock since October of 2017.

We do not come to the decision of filing a complaint lightly. Complainants have made numerous efforts to get the City to end its discriminatory zoning practices, including participation in two separate city-led public processes. First, we, along with other neighborhood residents and civil rights activists, strongly advocated for the city to put a stop to its racist zoning practices when the it updated the 2040 Plan. We asked for the city to draw a fairer land use map in the 2040 Plan, but City Council ultimately refused and passed the plan on December 17, 2018. Second, we attempted to get the City to recognize its discriminatory zoning practices as an impediment to fair housing choice in its 2018 Analysis of Impediments to Fair Housing (“AI”) and 2019 Consolidated Plan. However, the City of Lubbock did not publish a draft of the AI until after the draft Consolidated Plan was released, failed to comply with citizen participation requirements for the AI and Consolidated Plan, and refused to accept, in the process of producing its AI, complainants’ comments about the City’s discriminatory zoning code and the 2040 Plan. During public hearings for the Consolidated Plan and the AI, city officials shut down public commenters who spoke about discriminatory zoning and land use patterns. Further, the City refused to acknowledge written comments about the issue. The City also violated several HUD regulations listed below. Because of these violations and the fact that the City’s AI is both substantially incomplete and inconsistent with fair housing and civil rights requirements, the City falsely

certified that it was affirmatively furthering fair housing in the Consolidated Plan it submitted to HUD.

### **III. Statement of Fact**

The allegations in this complaint are based on two separate, but related actions taken by Respondents as part of an ongoing pattern and practice of discrimination against persons on the basis of their race, color, and national origin: 1) the City of Lubbock's December 17, 2018 ratification of the discriminatory 2040 Plan; and 2) the City of Lubbock's false certifications, including its false AFFH certification, signed on July 22, 2019, and included in the 2019-2023 Consolidated Plan submitted to HUD on or about August 15, 2019. This statement of fact is divided into two parts. Part A addresses the events surrounding the 2040 Plan. Part B addresses the AI, Consolidated Plan, and the AFFH and other certifications based on these documents.

#### **Part A: The 2040 Plan**

Plan Lubbock 2040 ("2040 Plan") is the City of Lubbock's most recent comprehensive plan.<sup>1</sup> The land use map<sup>2</sup> within the plan, which will be the basis for all future zoning decisions, intentionally discriminates against and disproportionately impacts Black and Hispanic citizens because it concentrates environmentally hazardous industrial land uses in and around neighborhoods that are majority Black and Hispanic in Lubbock's east and north sides. The 2040 Plan also perpetuates segregated housing patterns. Both residential segregation and the discriminatory concentration of industrial land uses in majority Black and Hispanic neighborhoods were intentionally created during the days of Jim Crow and laid down in law in the City's Zoning Code of Ordinance and Zoning Map. The City repeatedly and publicly stated that these policies were based on racial prejudice. The City has continued to perpetuate segregation and subject residents to hazardous land uses based on their race, color, and national origin. The City took new action to continue this practice when the City Council voted to approve the 2040 Plan on December 17, 2018. The council approved the land use maps in the 2040 Plan in spite of significant community opposition and ample notice of its discriminatory impact. The 2040 Plan, like the City of Lubbock comprehensive plans which came before it, continues to perpetuate segregation and unequal treatment on the basis of race, color, and national origin created and reinforced by prior public policy.

The City's historical and ongoing actions are deliberately discriminatory on the basis of race, color, and national origin. They have a disparate impact on Black and Hispanic residents. The historical background is one of openly discriminatory policies. The sequence of events leading up to the challenged decision includes deliberate failures to comply with public comment and other HUD requirements in order to exclude comments from Black and Hispanic residents, a major departure from normal decision-making procedures. Finally, this is part of a consistent

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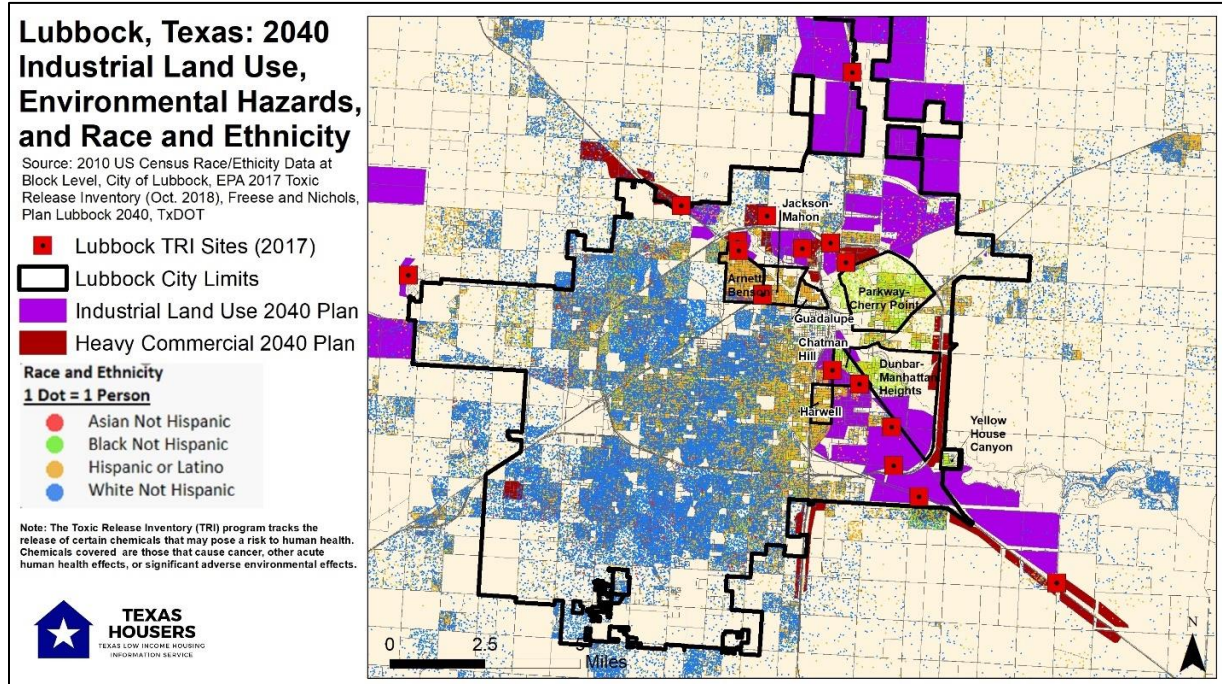
<sup>1</sup> City of Lubbock, Plan Lubbock 2040 (2018), <https://ci.lubbock.tx.us/storage/images/qLXKelyOZxc7Ke4ByQxiYk8ropy5RPZOoTvYEqC2.pdf>.

<sup>2</sup> Id. at 51.

pattern of actions of decision-makers that impose much greater harm on persons protected by the Fair Housing Act and Title VI of the Civil Rights Act.

### 1. The 2040 Plan’s land use map disproportionately impacts Black and Hispanic citizens

**Exhibit 1: Industrial and Heavy Commercial land uses in the City of Lubbock. See Exhibit 1a attached to see the City’s Future Land Use Map. All exhibits are attached as an appendix.**



As evidenced by the map in Exhibit 1 above below, the 2040 Plan’s land use map disproportionately impacts predominantly Black and Hispanic neighborhoods by surrounding them with industrial uses.<sup>3</sup> The concentration of industrial and heavy commercial uses overburdens neighborhoods of color with environmental hazards and high-nuisance facilities. For example, nearly all the toxic release inventory<sup>4</sup> (“TRI”) sites within the Lubbock city limits are within or on the border of neighborhoods which are majority Black or Hispanic.<sup>5</sup> A 2014 study from the Department of Geosciences at Texas Tech found that census blocks with high density African-American populations were located at an average of 568.1 meters closer to toxic releasing facilities than the average block groups in Lubbock County.<sup>6</sup> The 2040 Plan land use

<sup>3</sup> Id.

<sup>4</sup> Environmental Protection Agency, *2018 TRI Fact Sheet: City – Lubbock, TX*, (November 12, 2019), [https://enviro.epa.gov/triexplorer/tri\\_factsheet.factsheet?pstate=TX&pcity=Lubbock&pyear=2018&pParent=TRI&pDataSet=TRIQ1](https://enviro.epa.gov/triexplorer/tri_factsheet.factsheet?pstate=TX&pcity=Lubbock&pyear=2018&pParent=TRI&pDataSet=TRIQ1).

<sup>5</sup> See Exhibit 2

<sup>6</sup> Jason Michael Post, *Spatial Environmental Inequality in Lubbock, Texas* 43 (May 2014) (unpublished M.S. thesis, Texas Tech University) <https://ttu-ir.tdl.org/ttu-ir/handle/2346/58599> (“The average block group centroid in Lubbock County was calculated to be 3.037.7m from a toxic waste releasing facility. The regression showed that

map will not alter this pattern. Chemicals released from these types of facilities include those that cause cancer, acute human health effects, and/or significant adverse environmental effects.<sup>7</sup> Closer proximity to toxic releasing industries is indisputably more dangerous to human health and the environment. For residents in neighborhoods in the east and north side of Lubbock, the presence of industry is accompanied by other nuisances incompatible with residential uses, including noxious or smelly fumes, noise pollution, smoke and smog, and unsightly facilities and storage yards. Residents in Chatman Hill, an African-American neighborhood adjacent to a cotton oil mill, are subjugated to unpleasant fumes, oily film that collect on car windows, clogged air conditions systems caused by cotton particles, and annual infestations of boll weevils that are attracted to the large storage piles of cotton seed.<sup>8</sup> Residents in the Guadalupe neighborhood in northern Lubbock border several concrete batch plants which discharge particles created by the crushing of stone. Aside from health risks and nuisance conditions, the presence of industrial uses negatively affects homeowners' property values and threatens the future viability and vitality of these neighborhoods. Further, the zoning scheme deprives certain neighborhoods of the benefit of federal funds for new housing construction because the high concentration of nearby environmental hazards renders these areas incompatible with government-sponsored housing construction under HUD siting standards pursuant to 24 CFR § 58.5 and Executive Order 12898.

The most impacted neighborhoods in Lubbock are Chatman Hill, Dunbar-Manhattan Heights, Parkway-Cherry Point, Yellow House Canyon, Copper Rawlings and Guadalupe, Jackson-Mahon, and Arnett-Benson. Each of these neighborhoods are predominantly occupied by people of color. As the map in Exhibit 1 and the chart in Exhibit 2 below indicate, these census tracts are majority Black and Hispanic and are surrounded by industrial land uses and toxic release sites.

**Demographics of Impacted Neighborhoods**

Census Tracts	Neighborhood	Black, non-Hispanic	Hispanic	Percent White, non-Hispanic
2.02	Jackson-Mahon	3.99%	86.02%	9.98%
3.02	Arnett- Benson	5.96%	71.91%	13.69%
7	Guadalupe	3.88%	79.51%	15.25%
9	Parkway-Cherry Point	45.57%	47.73%	4.18%
10	Parkway-Cherry Point	49.45%	40.51%	8.94%
12	Chatman Hill and Dunbar-Manhattan Heights	71.19%	21.57%	6.87%

block groups containing a higher percentage of African American residents were located much closer to these facilities. This closer distance was found to be statistically significant. African American residents are located an average of 2469.6m away from toxic waste releasing facilities, a 568.1m closer proximity than the overall average for all block groups in Lubbock County.”)

<sup>7</sup> Environmental Protection Agency, *What is the Toxic Release Inventory* (Visited November 18, 2019), <https://www.epa.gov/toxics-release-inventory-tri-program/what-toxics-release-inventory#What%20are%20TRI%20toxic%20chemicals?>.

<sup>8</sup> Texas Housers, *Lubbock Voices and Visions* (March 2018), <https://www.arcgis.com/apps/MapSeries/index.html?appid=2f046a02384048d183fa29a61d4a2afa>.

25	Harwell	13.2%	62.91%	22.3%
105.08	Yellow House Canyon <sup>9</sup>	6.01%	35.30%	57.30

**2. The 2040 Plan is part of a consistent pattern of discriminatory land use decisions made by decision makers in the City of Lubbock.**

The 2040 Plan perpetuates the City of Lubbock’s discriminatory land use policies. Past city policies and land use plans created during the Jim Crow era sought to confine African Americans and Hispanics to Lubbock’s east and north sides while at the same time expanding industry in those areas. The earliest plans and policies were blatantly racist and openly considered race as a factor in Lubbock’s industrial development.

Early in Lubbock’s history, the city segregated African Americans in specific neighborhoods on the east side and built industry around their communities. In 1920, the Lubbock Avalanche published an editorial calling on the city to regulate where black Lubbockites could live: “People are not going to stand for negro neighbors, and if there is not regulation made by the proper authorities there is liable to be regulations of a private nature, which should be avoided if possible...”<sup>10</sup> Three years later, in 1923, the Lubbock City Council created Ordinance 223, which prohibited African-Americans from owning or renting property anywhere outside of the area south of 16<sup>th</sup> Street and east of Avenue C, excepting *bona fide* servant’s quarters.<sup>11</sup> The Ordinance was intentionally discriminatory on the basis of race, in defiance of a United States Supreme Court decision that held racial zoning laws unconstitutional in 1917.<sup>12</sup> The ordinance read in part:

“Section 1: No negro or person of African descent or containing as much as one-eighth negro blood shall own property or reside thereon in any part of the city except that part lying South of 16<sup>th</sup> St. and East of Avenue C, and no person shall rent or lease to any such negro or person of African descent or one containing as much as one-eight negro blood outside of the territory limits, as above...

Section 4: The fact that negroes and persons of African descent and persons containing as much as one-eighth negro blood are residing in various portions of this city and **their residents (sic) is dangerous to the health and pollutes the earth and atmosphere, creates an emergency** and necessity that the removal of the charter requiring an ordinance to be read at two several meetings be suspended and this ordinance been acted at the meeting of its introduction and effective upon publication.”<sup>13</sup> (emphasis added)

<sup>9</sup> The Yellow House Canyon neighborhood is in a majority white census tract, but the neighborhood itself is majority black.

<sup>10</sup> Robert Foster, *Black Lubbock: A History of Negroes in Lubbock, Texas, to 1940* 47 (Dec. 1974) (unpublished M.A. thesis, Texas Tech University) (quoting *Lubbock Avalanche* (Feb. 5, 1920)) (“In all probability the time has come when our city must designate a certain portion of the city for these people [African Americans] to build their home and live separate and apart from the balance of us. People are not going to stand for negro neighbors, and if there is not regulation made by the proper authorities there is liable to be regulations of a private nature, which should be avoided if possible...”).

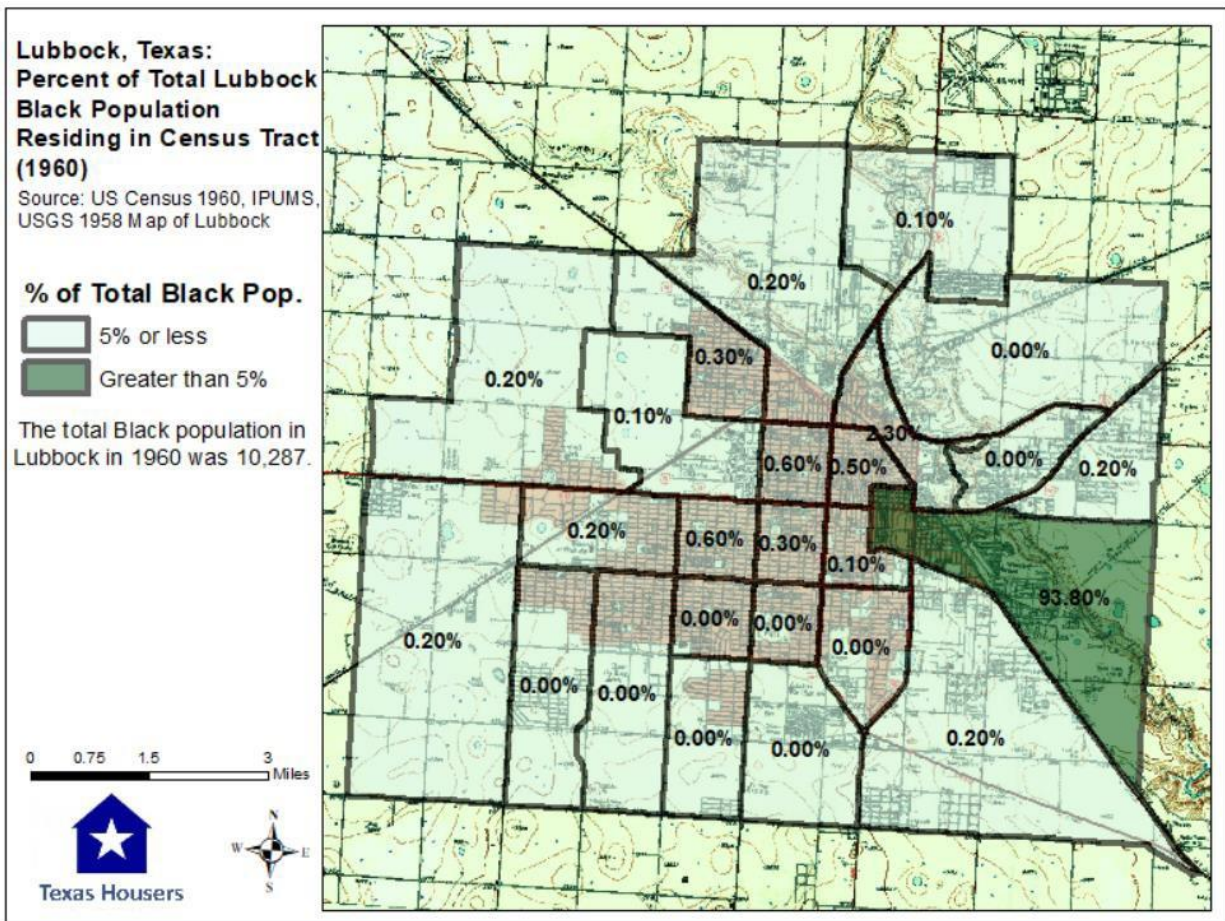
<sup>11</sup> *Id.* at 109.

<sup>12</sup> The Lubbock ordinance was assuredly unconstitutional when it was written. The Supreme Court struck down a similar ordinance in Louisville, Kentucky in *Buchanan v. Warley*. 245 U.S. 60 (1917).

<sup>13</sup> *Id.* at 110 (quoting from Ordinance 223 Section 4).

Ordinance 223 was signed by the mayor and achieved the desired result—by 1940, all African-American births in Lubbock occurred within the boundaries prescribed by the ordinance.<sup>14</sup> Even as late as 1960, 93.8% of Lubbock’s black population lived within the confines. (See Exhibit 2).

**Exhibit 2: Percentage of Lubbock’s Total Black Population by Census Tract (1960)**



Segregation was also enforced through private action.<sup>15</sup> White developers and reinforced racial segregation by incorporating deed restrictions that prohibited property owners from selling to people of color.

The City of Lubbock also found additional ways to use its zoning power to deliberately further segregation. In Lubbock’s first comprehensive plan, published in 1943, city planners created industrial buffer zones separating communities of color from the rest of the city. The 1943

<sup>14</sup> James R. Henley Jr. & Charles K. Edgley, *Population Change by Ecological Areas in East Lubbock (1960–1965)* (on file with Texas Tech University, Southwest Collections).

<sup>15</sup> Jason Michael Post, *Spatial Environmental Inequality in Lubbock, Texas 5* (May 2014) (unpublished M.S. thesis, Texas Tech University) <https://ttu-ir.tdl.org/ttu-ir/handle/2346/58599>.



comprehensive plan was openly discriminatory,<sup>16</sup> reserving the east and north sides for Black and Hispanic neighborhoods and industrial uses:

“The area to the East and to the North of the present business district has been preempted by the Santa Fe Railroad right-of-way tracks and yards. **Immediately beyond this industrial area the attendant development is principally for Negro and Mexican families. This [cannot] be considered as desirable potential property for white residential development** excepting probably the area on the heights to the East of the Mackenzie State Park. **The prospective developments to the East and North, then, under such circumstances could not be expected to encourage the extension of the central business district in those directions.**”<sup>17</sup> (emphasis added)

In 1943, most of the Lubbock’s black population lived in the “Flats,” the “Wheelock Addition” (present-day Chatman Hill), the Seiber Second Additions, and unincorporated areas outside of the city limits. Wheelock was surrounded by industry and the railroad (see Exhibit 4 below).<sup>18</sup> Its western border was the Santa Fe railroad, zoned “M” for manufacturing. To the south, a strip of land was zoned L for manufacturing. To the east, separating the black community from downtown, lay six blocks of railroad tracks and land zoned F, J, and L for industry and manufacturing.<sup>19</sup> The Seiber Second Additions were immediately south of Wheelock and the city limits line. This land would be annexed by the city during urban renewal—a portion was zoned residential and incorporated into Chatman Hill and Manhattan Heights. The area south of present-day Coronado Drive would become industrial.

### **Exhibit 3: 1943 Plan Zoning Districts<sup>20</sup> (Manufacturing and Industrial in purple)**

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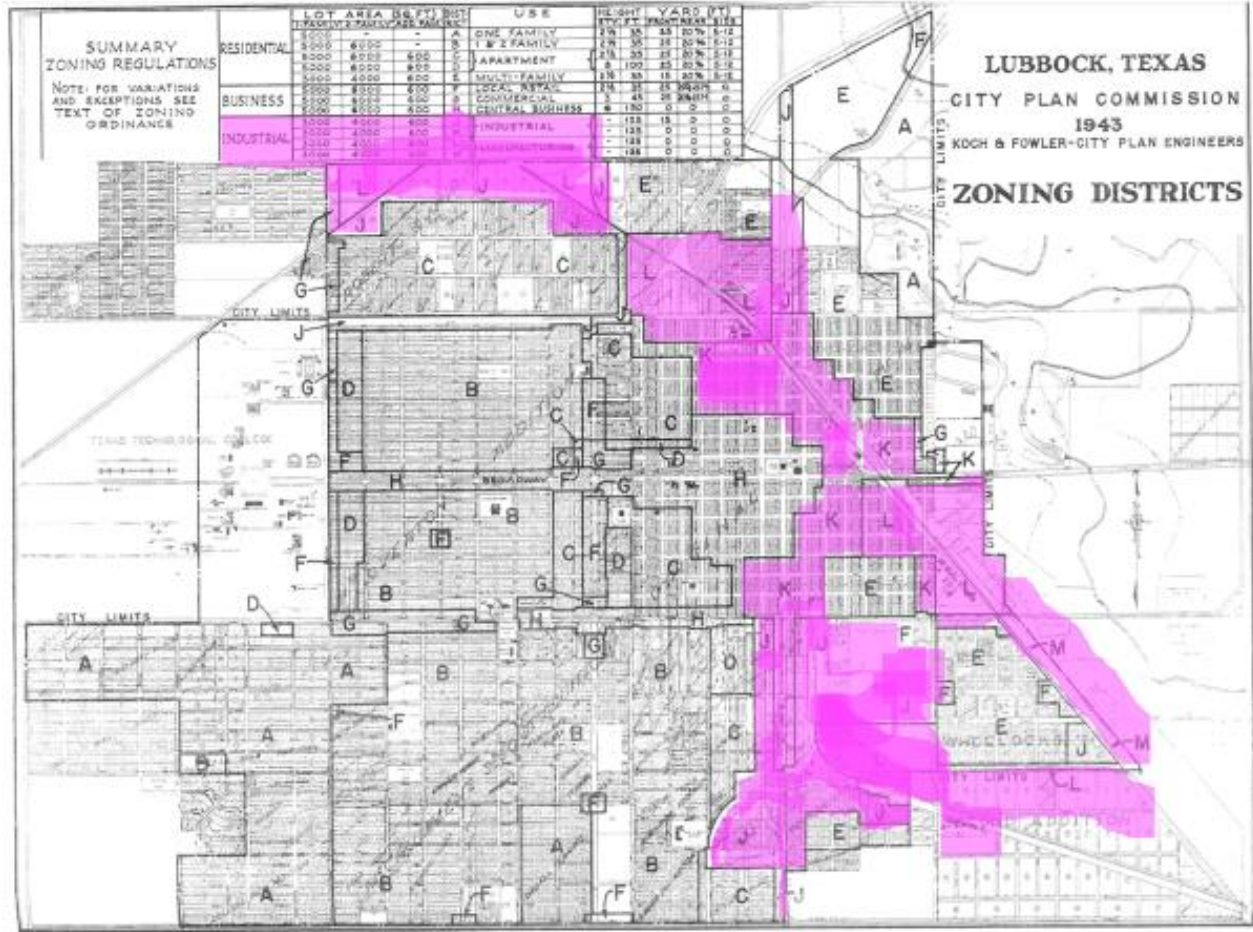
<sup>16</sup> Cynthia L. Sorrensen, Perry L. Carter & Jack Phelps, Urban landscape as mirror of ethnicity: trees of the South Plains, *URBAN GEOGRAPHY* 36:7, 1042–63 (July 2, 2015), <https://doi.org/10.1080/02723638.2015.1039397> (“Discriminatory thinking behind annexation was blatantly demonstrated in the 1943 city plan of Lubbock. Eastside property that extended from industrial areas was deemed ‘not appropriate’ for White residences. Black and Latino residential landscapes were not seen in a similar vein, and instead were deemed ‘appropriate’ for the eastside and its exposures to industry. This became even more clear in 1953 when the Southeast Lubbock Development Board (SLDB) was established for the sole purpose of developing eastside residential zones for Black residences. The mission of the board aligned with the urban blight/annexation discourse and worked to alleviate hazardous conditions within already-existing slum areas, which had supposedly resulted from overcrowding. It also encouraged the relocation of historic Black communities to newer developments on the eastside. **In essence, Black and Latino residential landscapes were not really residential in the minds of city planners; these landscapes were instead understood as extensions of industrial landscapes where labor lived and worked.**” (Emphasis added.)).

<sup>17</sup> CITY OF LUBBOCK, TEXAS PLANNING, *The City Plan of Lubbock Texas* (1943), <https://www.ci.lubbock.tx.us/departamental-websites/departments/planning/lubbock-s-past-and-future/comprehensive-plans>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 46; see also Post, *supra* note 11, at 8

<sup>20</sup> CITY OF LUBBOCK, TEXAS PLANNING, *Lubbock Comprehensive Land Use Plan* (1943).



Lubbock’s 1959 comprehensive plan continued to perpetuate racial segregation and subject African-American and Hispanic communities to discriminatory zoning and land use policies, just as the city’s 1943 comprehensive plan had done. Almost 40 years after the passage of Ordinance 223, nearly 94% of Lubbock’s Black population still lived within the *de jure* segregated areas it created. The 1959 comprehensive plan continued to concentrate industrial zoning around the African-American and Hispanic communities, surrounding Chatman Hill with pollution and expanding industrial zoning in newly annexed land in the southeast.<sup>21</sup> The 1959 comprehensive plan stated that the ideal neighborhood should be “free from the noxious odors, sounds and sights of industry.”<sup>22</sup> Heavy industries, it stated, “are known to emit smoke, dust, odor, or noise, or are hazardous by nature.”<sup>23</sup> The plan made much of a southwestern prevailing breeze as a reason to locate industry in the northern and southeastern parts of the city because the wind would carry noxious fumes away from residential areas.<sup>24</sup> The City of Lubbock clearly did not consider residential areas occupied by its Black and Hispanic citizens, which were already surrounded by

<sup>21</sup> CITY OF LUBBOCK, Lubbock Comprehensive Plan Land Use Report (1959), [https://www.ci.lubbock.tx.us/docs/default-source/planning-file-library/1959-plan.pdf?sfvrsn=f7809bc8\\_4](https://www.ci.lubbock.tx.us/docs/default-source/planning-file-library/1959-plan.pdf?sfvrsn=f7809bc8_4).

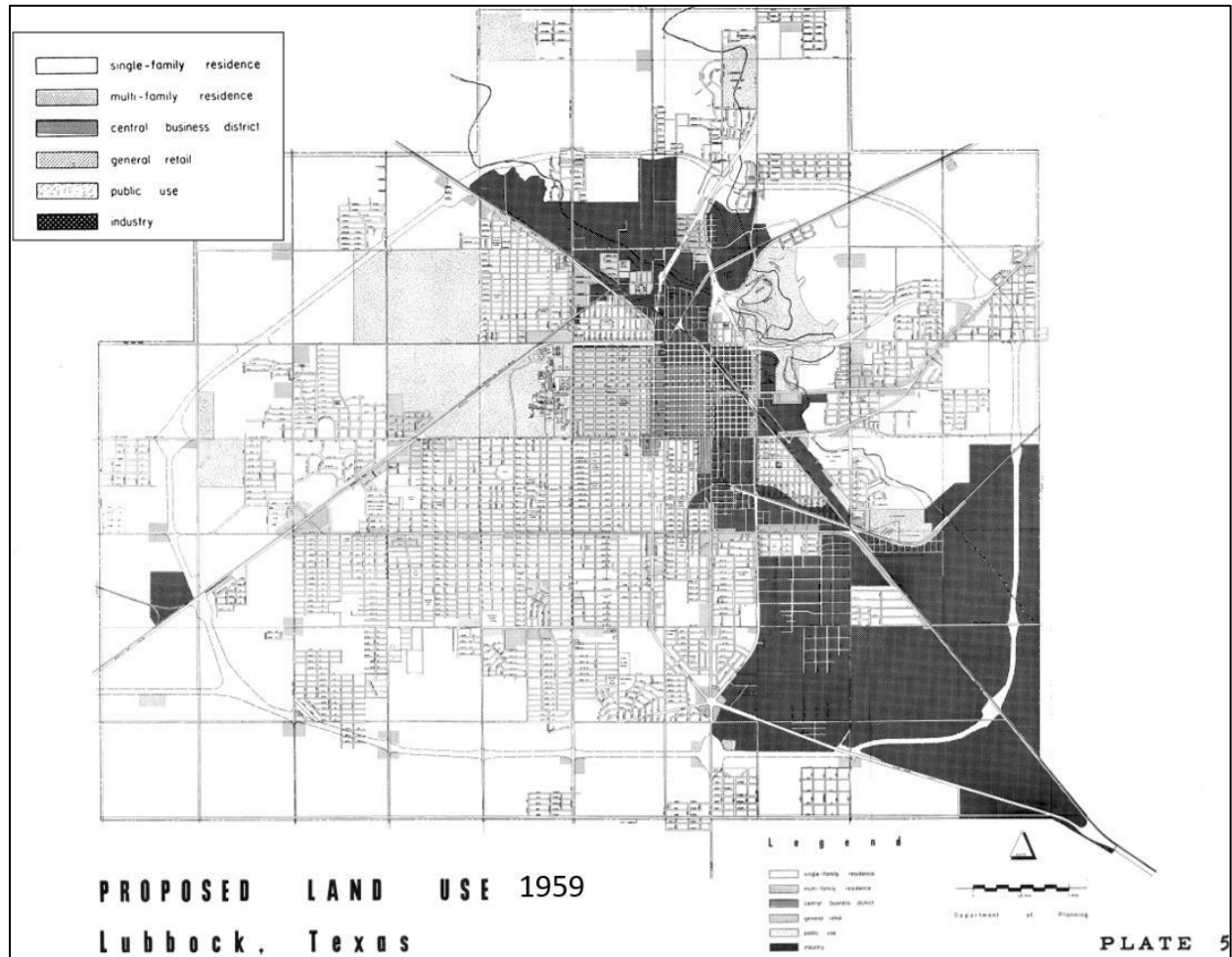
<sup>22</sup> *Id.* at x.

<sup>23</sup> *Id.* at 6.

<sup>24</sup> *Id.* at 16.

industry, worthy of the same protection as white neighborhoods, and deliberately subjected Black and Hispanic neighborhoods to the “noxious odors, sounds, and sights of industry” that the City itself found “hazardous by nature.”<sup>25</sup>

**Exhibit 4: Proposed Zoning from the 1959 City of Lubbock Plan<sup>26</sup>**



Concurrent with the 1959 planning effort, Lubbock also began the process of urban renewal. The Housing Act of 1949 provided federal funds to cities to combat blight in urban areas. Cities could use the funds to tear down and relocate “blighted” communities under the auspice of health and safety.<sup>27</sup> Urban renewal left no part of Lubbock’s Black community untouched. During the “Coronado Project,” The Lubbock Urban Renewal Agency acquired and demolished almost all the homes in present day Chatman Hill and attempted to relocate the inhabitants to new

<sup>25</sup> Cynthia L. Sorrensen, Perry L. Carter & Jack Phelps, *Urban landscape as mirror of ethnicity: trees of the South Plains*, URBAN GEOGRAPHY 36:7, 1048 (July 2, 2015), <https://doi.org/10.1080/02723638.2015.1039397>.

<sup>26</sup> *Lubbock Comprehensive Plan Land Use Report* (1959).

<sup>27</sup> John Overton Burford, *The Development of the Coronado Urban Renewal Project* 48–49 (1966) (unpublished MBA thesis, Texas Tech University) <https://ttu-ir.tdl.org/ttu-ir/handle/2346/13637?locale-attribute=es>.

subdivisions designed specifically for African-Americans.<sup>28</sup> These subdivisions included Manhattan Heights, which was developed for “Negro occupancy since the initial planning for the Coronado Project came into being.”<sup>29</sup> In an interview in 1969, J.D. Hassell, a member of Lubbock’s first planning and zoning board acknowledged urban renewal was meant to keep African-Americans separated from whites. Segregation, he said, “was perfectly natural and logical.”<sup>30</sup> While Urban Renewal Agency policies continued to confine African-Americans to the east side, city planners continued the expansion of industrial zoning in the same area.

In 1986, Lubbock published a new comprehensive plan. In the years since 1959, the racial makeup of the east and north sides changed substantially. The Arnett Benson and Jackson Mahon neighborhoods became majority Hispanic. The Parkway and Cherry Point neighborhoods, in the northwest quadrant of the city, changed from majority white in 1960 to majority African American and Hispanic by 1980 (See **Exhibit 5** attached). Now that these neighborhoods were majority Black and Hispanic, the 1986 comprehensive plan proposed major expansions of industrial zoning in these areas. The change blocked these neighborhoods of color from expanding outside of their existing boundaries and limited the possibility of future residential development.<sup>31</sup> Shortly after the publication of the 1986 comprehensive plan, the final portion of Interstate 27 was constructed along the old Avenue C corridor. Although nearly 70 years had passed since Ordinance 223, the highway served as a physical reminder of the racist ordinance, having been built along the same segregative barrier the old ordinance had prescribed. The land use patterns finalized in the 1986 comprehensive plan, coupled with the construction of I-27, have controlled the growth of Lubbock for the last 30 years. The expansion of industrial land use in East and North Lubbock near communities of color, and the construction of I-27, which effectively severed East Lubbock from the rest of the city, perpetuated the discriminatory impact of past City plans, and continued the City’s discriminatory pattern and practice of racial and ethnic segregation and discriminatory zoning. The 1986 comprehensive plan was in effect for 32 years before the ratification of the 2040 Plan.

### **Exhibit 6: City of Lubbock 1986 Comprehensive Plan Land Use Plan<sup>32</sup>**

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<sup>28</sup> Id.

<sup>29</sup> Letter from H.O. Alderson, Executive Director of Urban Renewal Agency of City of Lubbock (Jan. 15, 1960) (on file with Texas Tech University, Southwest Collections).

<sup>30</sup> Interview with J.D. Hassell by Alice Johnson (Jan. 11, 1972) (On file with Texas Tech University, Southwest Collections).

Interviewer: “Now you had the Manhattan Project [sic] come up during the time you were on. Now this was particularly for the blacks.

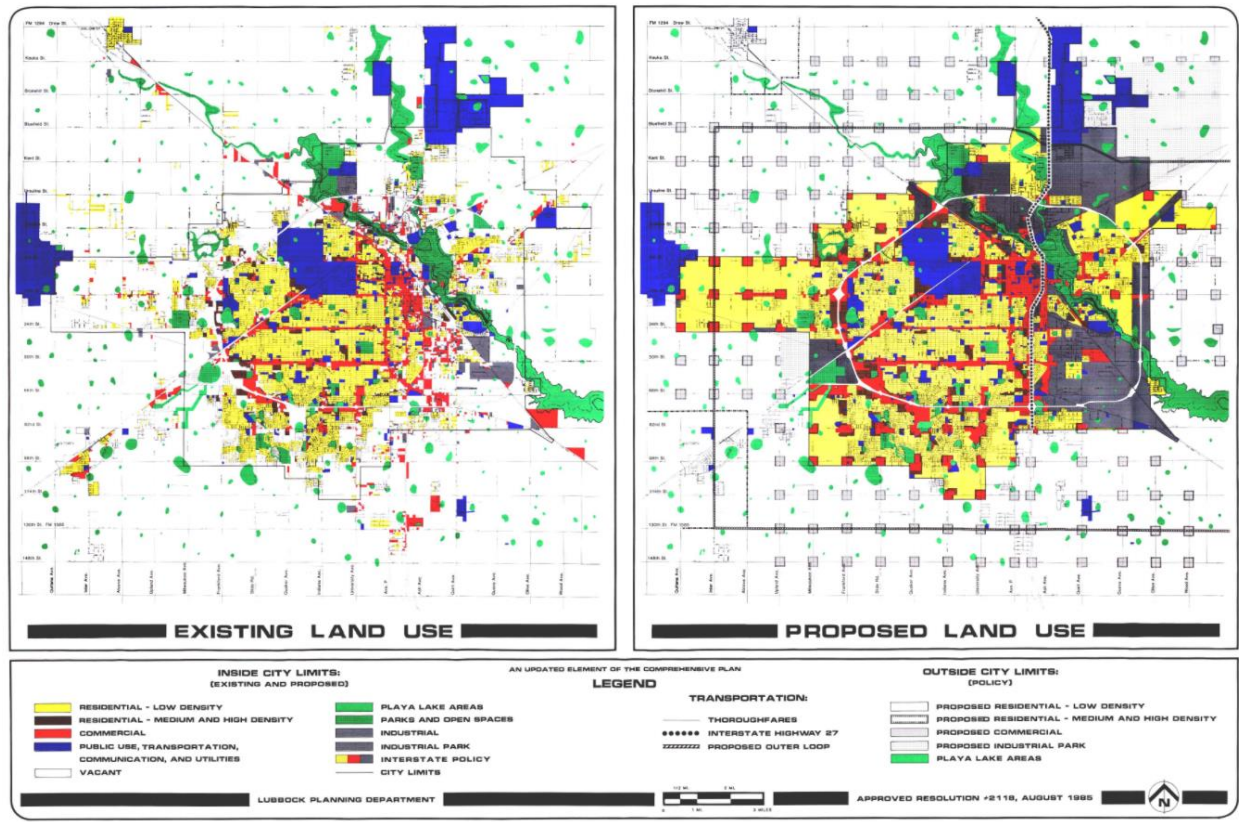
Hassell: “That’s right.”

Interviewer: “Now as this a city plan to keep them over there?”

Hassell: I can only offer my opinion on that and I think it was. It was perfectly natural and logical at that time.”

<sup>31</sup> CITY OF LUBBOCK, *1986 Comprehensive Land Use Plan* (1986), [https://mylubbock.us/docs/default-source/planning-file-library/land-use-plan-1975-1986.pdf?sfvrsn=1f5f98c8\\_](https://mylubbock.us/docs/default-source/planning-file-library/land-use-plan-1975-1986.pdf?sfvrsn=1f5f98c8_).

<sup>32</sup> Id.



### 3. The Sequence of Events Leading to the Challenged Decision and its Legislative History

In May of 2017, the City began the 2040 Plan process by hiring a consultant, Freese and Nichols, and appointing a board of 30 citizens to serve on the Comprehensive Plan Advisory Committee (“CPAC”).<sup>33</sup> Of these 30 members, only one was African-American. That person was also the only member who was a resident of a neighborhood listed above. One of the first acts taken by the consultant and the CPAC was to submit the Interim Land Use Map to the City Council, which approved it to become effective on February 1, 2018.<sup>34</sup> The Interim map continued to perpetuate the disparate treatment of and disparate impact on Black and Hispanic residents by concentrating industrial zoning in and around Black and Hispanic neighborhoods. In an attempt to stop the Interim Land Use Plan from becoming permanent, the Alliance of East Lubbock Neighborhood Associations (“AELNA”), made up of the presidents of Chatman Hill, Dunbar-Manhattan Heights, Parkway-Cherry Point, and Yellow House Canyon, and civil rights leaders,

<sup>33</sup> Matt Dotray, *Council to appoint 30 citizens to committee tasked with updating Comprehensive Land Use Plan*, LUBBOCK AVALANCHE-JOURNAL (May 10, 2017), <https://www.lubbockonline.com/news/2017-05-10/council-appoint-30-citizens-committee-tasked-updating-comprehensive-land-use-plan>.

<sup>34</sup> CITY OF LUBBOCK, *Interim Future Land Use Plan* (February 1, 2018), available at: <https://ci.lubbock.tx.us/storage/images/H4oAkRrIVCoXHrOAbYVGcEYVAVw7emZVBXS7NLpH.pdf>.

submitted a written public comment to Freese and Nichols and the CPAC, June 26, 2018.<sup>35</sup> The letter laid out the discriminatory history of zoning in East and North Lubbock and asked the city to cease concentrating industry on the east side. The letter also addressed discriminatory disparities in infrastructure and public transportation. Leaders and concerned citizens attended several CPAC meetings to give oral comments regarding their concerns and urged the CPAC and consultants to make reduction of industrial zoning, transportation reform, and economic development priorities in the 2040 Plan.<sup>36</sup> While Freese and Nichols and CPAC inserted some non-binding recommendations in response to criticism, they made no meaningful changes to the interim land use map. Residents brought their concerns to city leaders at separate public hearing in front of the Lubbock Planning and Zoning Commission and City Council. Council considered and ultimately approved the 2040 Plan on December 17, 2018.<sup>37</sup> Despite community opposition, City Council did not make changes to the land use map nor implement any of the recommended changes involving reducing the concentration of industry in East and North Lubbock. The following is a timeline of events dating from the appointment of the CPAC in May 2017 to the ratification of the plan on December 17, 2018.

### 2040 Plan Timeline

- May 22, 2017
  - The CPAC held its first meeting at the Lubbock Civic Center. The CPAC was appointed by the Lubbock City Council to work with the city's chosen consultant, Freese and Nichols, to work on creating the new Comprehensive Land Use Plan.<sup>38</sup> Only one CPAC member is a resident of a majority African-American neighborhood.
- December 18, 2017
  - The City Council approved the Interim Land Use Plan on First Reading. In Lubbock, ordinances are finally passed after getting majority approval by City Council in two readings.
- January 11, 2018

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<sup>35</sup> The Alliance of East Lubbock Neighborhood Associations Public Comment to Freese and Nichols (June 26, 2019), available at: <https://texashousers.net/2018/07/11/a-group-of-lubbock-neighborhood-associations-asks-the-city-to-make-an-equitable-comprehensive-plan-will-lubbock-listen/>.

<sup>36</sup> Matt Dotray, *Citizens ask for delay, more details and enforcement in Lubbock's comprehensive plan*, LUBBOCK AVALANCHE-JOURNAL (October 15, 2019), <https://www.lubbockonline.com/news/20181015/citizens-ask-for-delay-more-details-and-enforcement-in-lubbocks-comprehensive-plan>. See also:

<sup>37</sup> Ryan Crowe, *City approves final reading of 'Plan Lubbock 2040'*, KCBD (December 17, 2018) <https://www.kcbd.com/2018/12/18/city-approves-final-reading-plan-lubbock/>.

<sup>38</sup> Minutes of Comprehensive Plan Advisory Committee meeting (May 22, 2017). Available at: <https://clients.freese.com/lubbock/files/43/Posted%20May%202022,%202017.pdf>.

- The City Council passes the Interim Land Use Plan on Second Reading. The Interim Land Use Plan concentrates future industrial land uses near communities of color on the east and north sides of the city.<sup>39</sup>
- February 1, 2018
  - The Interim Land Use Plan becomes effective.<sup>40</sup>
- May 30, 2018
  - CPAC held its 12<sup>th</sup> meeting. The Alliance of East Lubbock Neighborhood Associations (“AELNA”) Legal Aid of Northwest Texas, Texas Housers, and other community members advocated for changing the Interim land use map to reduce the concentration of industry in neighborhoods of color, and include transportation improvements, and infrastructure equity.
- June 26, 2018
  - Through their attorneys at Legal Aid of Northwest Texas, AELNA submits a written comment to the CPAC, Freese and Nichols, and the City of Lubbock regarding the discriminatory history of Lubbock’s zoning. and requested the reduction of industrial zoning in the east side. The comment also asks for an equitable transit system and infrastructure. Texas Housers contributes historical research to this comment.
- September 12, 2018
  - The CPAC holds its 13th public meeting. AELNA, Legal Aid of Northwest Texas, Texas Housers, and other community members publicly repeat their concerns.
- September 26, 2018
  - Freese and Nichols and the CPAC releases the first draft of the 2040 Plan.<sup>41</sup> No significant changes to the interim land use map are made to alleviate burdens on majority Black and Hispanic neighborhoods in the final Future Land Use Map. It continues to disproportionately impact Black and Hispanic citizens with industrial and heavy commercial land uses.
  - In response to criticism from advocates and the public, Chapter 7 of the draft contains a section entitled, “Spotlight – Eastern and Northern Lubbock Neighborhoods.’ This section makes many recommendations including to “disallow the expansion of heavy commercial or industrial uses.” However, this recommendation is not reflected in the critical land use map.
  - The plan also includes a list of priority recommendations called, “The Implementation Matrix.” None of the recommendations for reducing industrial zoning are included in the Implementation Matrix. The Matrix recommends the city “formally initiate a neighborhood planning program” with East Lubbock neighborhoods being first included.<sup>42</sup>

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<sup>39</sup> Freese and Nichols, *Plan Lubbock 2040 News and Events*, (Visited November 19, 2019), <https://clients.freese.com/lubbock/?page=NewsAndEvents>.

<sup>40</sup> CITY OF LUBBOCK, *Interim Future Land Use Plan* (February 1, 2018).

<sup>41</sup> CITY OF LUBBOCK, *Plan Lubbock 2040 – 9/26/18 Draft* (September 26, 2018), <https://ci.lubbock.tx.us/departments/planning/comprehensive-plans>.

<sup>42</sup> *Id.* at 224.

- October 15, 2018
  - Freese and Nichols and the CPAC holds an open house regarding the 2040 Comprehensive Plan Draft. Over one-hundred citizens attended the public forum. The majority of the commenters oppose concentration of industry on the east and north side of town, advocate for equal investments in infrastructure, and for a fairer transportation system.<sup>43</sup>
- October 16, 2018
  - At its final meeting, the CPAC votes to amend the plan based on amendments offered by the AELNA.
  - These amendments include recommendations to change the land use map and adopt a “long-term plan to remove industrial uses adjacent to residential neighborhoods” on the east and north sides. Legal Aid of Northwest Texas submits a memo on behalf of AELNA memorializing these recommendations on October 18, 2018.<sup>44</sup>
- November 6, 2018
  - AELNA presents 200 petition cards asking the City to 1) to adopt the Comprehensive Plan with the AELNA’s amendments included; 2) change the Future Land Use Map to end the concentration of industrial land uses in East and North Lubbock; 3) establish an East and North Lubbock Community Fund from a percentage of tax dollars collected from industrial uses.<sup>45</sup>
  - The Lubbock Planning and Zoning Commission (“P&Z”) voted to approve the Draft 2040 Comprehensive Plan without including the AELNA amendments that had been approved by the CPAC or making any changes to the land use map. Instead they included the revisions in an appendix without incorporating them into the final plan.
- November 19, 2018
  - Freese and Nichols releases a new draft of the 2040 Plan. No changes were made to the land use map. However, the new draft adds language based upon AELNA’s demands. It recommends conducting a “localized review of the Future Land Use map to determine if revisions are appropriate” and conduct “parcel level analysis related to environmental remediation.”<sup>46</sup> **This language is removed in the final draft approved by City Council.**
- December 6, 2018
  - AELNA presents more petition cards to City Council.
  - Referring to complaints from citizens of East Lubbock neighborhoods regarding nearby Toxic Release Inventory sites, Mayor Dan Pope promises to look into “air

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<sup>43</sup> Dotray, Matt, *North and East Lubbock residents share concerns of living near environmental hazards*, LUBBOCK AVALANCHE-JOURNAL (October 16, 2019), <https://www.lubbockonline.com/news/20181016/north-and-east-lubbock-residents-share-concerns-of-living-near-environmental-hazards>

<sup>44</sup> CITY OF LUBBOCK, Plan Lubbock 2040 (2018) at 280-282.

<sup>45</sup> Id. A copy of this card was attached at in the appendix.

<sup>46</sup> CITY OF LUBBOCK, DRAFT Plan Lubbock 2040 (Released November 19, 2018) at 181-182. <https://ci.lubbock.tx.us/storage/images/QCivZ4Bm5hyTO4U5Y00f4tUt7znPBfpd4VNVkssB.pdf>



quality issues” saying that this issue is “news to me” and says that they are not in the city’s purview. Referring to the 1923 Ordinance which forced Black citizens to live in the southeast side of town near industrial sites, the Mayor says, “I find it difficult to look at documents that reference 1923 and find relevance in that tonight. There are some things in our history we’re not proud of, I’m not proud of...”<sup>47</sup>

- The City Council voted to approve the draft of the 2040 Plan on First Reading.
- December 17, 2018
  - The City Council votes to pass the draft 2040 Plan on Second Reading without making changes to the land use map or including the AELNA amendments in the body of the plan.
  - Before announcing revisions to the 2040 Plan, Mayor Dan Pope says, “This is not an Obamacare kind of thing. We didn’t just get this.”<sup>48</sup> The Mayor continued that Council had taken time to deliberate over the revisions.
  - The final draft approved by Council removed amendments and language that Freese and Nichols had added on November 19, 2018 based upon the recommendations from the Alliance of East Lubbock neighborhoods. **(See Exhibit 7)**
  - The final draft of the 2040 Plan is approved by City Council and includes only two recommendations for dealing with industrial zoning including:
    - “Disallow expansion of heavy commercial or industrial uses”; and
    - “Commission an independent research study to determine health, environmental, and economic effects of the industrial concentration in Northern and Eastern Lubbock.”<sup>49</sup>
  - However, none of the recommendations involving downzoning are included in the list of priority recommendations or “Implementation Matrix” in the conclusion of the plan, rendering them meaningless.<sup>50</sup> City Council does not act on any of these recommendations.
  - The Matrix does recommend beginning a “formalized neighborhood planning program” for the neighborhoods in East Lubbock. However, the City Council

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<sup>47</sup> Lubbock City Council Video, *Item 11: Public Hearing 5:15 p.m. - Planning: Consider a recommendation to the City Council by the Planning and Zoning Commission regarding the adoption of the City of Lubbock 2040 Comprehensive Plan, and consider an ordinance.* (December 6, 2018), at 56.00 minutes. Available at: <https://lubbocktx.swagit.com/play/12062018-1462>

<sup>48</sup> Lubbock City Council Video, *Item 5: Public Hearing - 5:15 p.m. and Ordinance 2nd Reading - Planning: Consider Ordinance No. 2018-00141, adopting the City of Lubbock 2040 Comprehensive Plan.* (December 17, 2018), at 1 hour, 10 minutes. Available at: <https://lubbocktx.swagit.com/play/12172018-1644>

<sup>49</sup> Plan Lubbock 2040 at 181-83.

<sup>50</sup> Id. at 220-25. The Plan does recommend beginning a “formalized neighborhood planning program” for the neighborhoods in east Lubbock. The City Council ultimately decided to postpone the neighborhood planning process and not committed funds or budgeted to pay for the process. See also: City of Lubbock Proposed Operating Budget and Capital Program 2019-2020, available at: <https://ci.lubbock.tx.us/storage/images/KwXo1C8JFuqgSF8A7psxz6LN6KYaYzRf56eUQiQB.pdf>.

ultimately decides to postpone the neighborhood planning process and has not committed funds or budgeted to pay for the process.

## **Part B: The AI, the Consolidated Plan, and the City of Lubbock’s Fair Housing and Civil Rights Certifications**

Part B of this complaint addresses the City of Lubbock’s false certifications and failure to carry out its statutory obligations to AFFH caused by a substantially incomplete Analysis of Impediments to Fair Housing<sup>51</sup> and violations of HUD Regulations. While the 2040 Plan process was ongoing, and after it was passed, Complainants attempted to obtain a firm commitment from the City to recognize and address the discriminatory effect and fair housing implications of the 2040 Plan Land Use Map and the concentration of industrial uses in communities of color by participating in the AI and Consolidated Plan process. Neighborhood and civil rights advocates, including Complainants, requested that the City recognize the 2040 Plan land use map and the discriminatory zoning scheme it perpetuated as an impediment to fair housing choice and commit to meaningful remedial action steps to cure these discriminatory effects. However, the City deliberately excluded this public input from the AI and Consolidated Plan processes, in violation of HUD consolidated plan regulations, AI regulations, and instructions in the Fair Housing Planning Guide. **Respondents did not release the first draft of AI until 2 days after the publication of the Consolidated Plan**, frustrating the ability of citizens to provide input regarding the fair housing impediments faced by communities of color, and meaning that the Consolidated Plan did not consider or address impediments to fair housing choice or ongoing civil rights issues. Respondents also failed to seek input from neighborhood associations representing majority African-American and Hispanic neighborhoods of low- and moderate incomes on the east and north side of Lubbock burdened by industrial zoning. Although Respondents held two public hearings after the Consolidated Plan was published, these hearings were flawed. Respondents impermissibly limited citizen participation by silencing citizens giving public comments related to the City’s discriminatory zoning, instructed Community Development Board Members that the duty to AFFH had been “suspended”, and refused to address written public comments from Complainants related to zoning. This noncompliance with Consolidated Plan regulations and its AFFH obligations is part of a continued pattern resistance to compliance with fair housing and civil rights requirements – for example, respondents have not submitted a CAPER to HUD since 2015.

### **1. Timeline of events surrounding the 2040 Plan and the Analysis of Impediments and Consolidated Plan**

The following is a timeline of events related to the City’s 2018 Analysis of Impediments and Consolidated Plan.

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<sup>51</sup> CITY OF LUBBOCK, Consolidated Plan (2019) at 205. Available at: <https://ci.lubbock.tx.us/storage/images/aAGf0hGxNrZSeidE0pzQOxQAI0Tn47ucA0JkFztP.pdf>.

- April 4, 2018
  - The Lubbock Community Development Department holds a fair housing focus group to discuss fair housing impediments. According to the City’s AI, the Community Development Department did not invite the Lubbock NAACP, neighborhood associations, and other groups directly representing people of color in Lubbock to participate.<sup>52</sup>
- April 23, 2018
  - Texas Housers staff member Adam Pirtle sends an email to Karen Murfee, Director of Lubbock Community Development, inquiring about the AI and ways for the public to be involved. **(All communications with Director Murfee are attached as Exhibit 8)**
- April 27, 2018
  - Adam Pirtle and Director Murfee meet in person at the Lubbock Community Development Office. At that meeting Director Murfee says that a draft AI would be released to the public but does not clarify when. Pirtle volunteers to provide extensive data and research he had prepared for the Lubbock community organizations, as well as to share the results of public meetings he had hosted or attended on fair housing issues in Lubbock. He volunteers to assist the City in conducting additional research and in organizing meetings concerning Fair Housing issues on the AI with Lubbock citizens and neighborhood groups.
- April 27, 2018 –
  - Pirtle sends follow up email to Director Murfee reiterating his offer of Texas Housers’ assistance. **(see Exhibit 8)**
- August 29, 2018 –
  - Pirtle submits an Open Records Request under the Texas Public Information Act<sup>53</sup> about the AI. The City of Lubbock provides no information at that time about future meetings regarding the AI and the Con Plan.
- October 3, 2018
  - Pirtle emails Director Murfee thanking her for agreeing to send him a draft of the 2018-2019 Annual Action Plan and requests to be notified when the draft of the AI was complete. Director Murfee responds to the email by sending a copy of Action Plan but does not answer the question regarding the publication of the AI. **(see Exhibit 8)**
- December 10, 2018
  - Pirtle emails Director Murfee and asks when the AI will be available for public review. She responded that Lubbock’s consultants would “have the AI finalized after the 1<sup>st</sup> of the year.” In follow up email sent the same day, Pirtle asks if the AI will be made public when completed and inquires about the length of any comment period. Director Murfee does not respond. **(See Exhibit 8)**

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<sup>52</sup> CITY OF LUBBOCK, Analysis of Impediments to Fair Housing (2018) at 5-8.

<sup>53</sup> Texas Government Code, Chapter 552.001 et. seq.,

- February 4, 2019 –
  - Pirtle emails Director Murfee asking again for the publication date of the AI and expresses the interest of Texas Housers and Lubbock community groups in reading and providing feedback on the draft AI. Director Murfee calls Pirtle back and provides no date for the publication of the AI draft. Pirtle writes a follow up email requesting to be notified when the draft AI is published. **(See Exhibit 8)**
- April 11, 2019
  - Legal Aid of Northwest Texas submits an open records request under the Texas Public Information Act for several documents, including a copy of the AI. Lubbock does not provide the information. The Deputy City Attorney requests a decision from the Texas Attorney General on April 26, 2019 as to whether the City may withhold the requested information.
- April 25, 2019
  - Pirtle emails Director Murfee to ask if Lubbock would release the AI before releasing the draft Con Plan. In a response email, she said that Lubbock would be “releasing the 2019 AI before releasing the DRAFT of the 2019-2023 Consolidated Plan.” **(See Exhibit 8)**
- May 15, 2019
  - Pirtle emails Director Murfee requesting to review the AI. Director Murfee responds: “The Assessment of Fair Housing (Analysis Impediment) is a component to the 2019 -2023 Consolidated Plan. 2019-2023 Consolidated Plan DRAFT will be available for 30 day Public Comment will begin Monday May 20th.” (emphasis in original) **(See Exhibit 8)**
- May 20, 2019
  - The Con Plan is posted on the Lubbock Community Development website. The AI is not posted at that time.
- May 22, 2019
  - Director Murfee sends Pirtle an email notification that the Con Plan and the AI were posted on the Lubbock Community Development website and that May 20<sup>th</sup> was the first day of 30-day public comment period which ended on June 18<sup>th</sup>. However, the AI is not posted on the City website at the time of notification. Pirtle emails Director Murfee to tell her that the AI is not posted and requested she send him a copy. **(See Exhibit 8)**. She does not respond. The AI is posted on the website shortly after Pirtle’s email. The AI is not made public until two days following the publication of the Consolidated Plan.
  - The AI contains a section about access to environmentally healthy neighborhoods on page 81. Although maps downloaded from AFFH tool indicate that communities living in Guadalupe neighborhood have a lower environmental scores than the rest of Lubbock, no remedial action is suggested.<sup>54</sup> Further, the complaints of East and North Lubbock citizens are not

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<sup>54</sup> CITY OF LUBBOCK, Analysis of Impediments to Fair Housing (2018) at 81-86.

mentioned despite widespread community engagement, press coverage, and comments to the city regarding the 2040 Plan.

- May 28, 2019
  - The draft Consolidated Plan indicates that there will be two “Consolidated Plan Community Events” on June 7 and June 8. Pirtle emails to ask if these were occurring. Director Murfee answers that they were not. **(See Exhibit 8)**
- May 31, 2019
  - Texas Housers sends Director Murfee, Lubbock City Manager Jared Atkinson, City Attorney Chad Weaver, and others a letter outlining the City of Lubbock’s failure to provide for adequate community participation. The letter lists six deficiencies with the city’s AI and Consolidated Plan process including: 1) Lubbock’s failure to allow reasonable opportunities for the community to participate in the AI; 2) Lubbock’s failure to use reasonable communication practices to reach the broadest possible audience when creating the AI; 3) Lubbock’s failure to have a public hearing before the Con Plan was published pursuant to 24 CFR § 91.105(e)(1)(ii); 4) Lubbock’s failure to encourage citizen participation; 5) Lubbock’s failure to provide meaningful access to non-English speaking residents; and 6) and how the City’s failure to provide adequate citizen participation opportunities, and deliberate rejection of relevant public comments and local data and information resulted in the City’s ongoing failure to AFFH. **(See Exhibit 9)**
- June 11, 2019
  - Director Murfee replies to Texas Housers’ letter via email. She included an updated public notice expanding the Consolidated Plan and AI comment period to 45 days and adding three public forums on June 11, 2019. **(See Exhibit 8)**
- June 12, 2019
  - The Community Development Service Board (“CDSB”) holds the first of two public meetings to discuss Consolidated Plan. Commenters complaining about the unfavorable land use decision in the 2040 plan are told that their comments were “not relevant” to the Consolidated Plan.
- July 3, 2019
  - Texas Housers and Texas Appleseed submits written comments on the Draft AI and Consolidated Plan to the City demanding that industrial concentration in East and North Lubbock be recognized as impediment to fair housing choice. **(See Exhibit 10)**
- July 10, 2019
  - The CDSB holds the second meeting public meeting to discuss the AI and Consolidated Plan and AI. Before the meeting, Michael Bates, an attorney with Legal Aid of Northwest Texas, representing the Alliance of East Lubbock Neighborhood Association, and Adam Pirtle asks Director Murfee, if the CSDB have been given an opportunity to read the written comments submitted to staff. They have not. The comments have not been distributed to the CDSB. Representatives of the NAACP, Texas Housers, and neighborhood associations

give oral public comments regarding the Consolidated Plan and the Analysis of Impediments. Pirtle describes the city's obligation to AFFH as including the duty to comprehensively reviewing policies that and practices that are contributing to segregation and creating meaningful strategies to eliminate them. This includes, Pirtle says, removing industrial zoning from areas surrounding neighborhoods on the east and north sides. At that same meeting, Director Murfee informs CDSB that the city had no obligation to AFFH because that obligation had "been suspended". Before voting on the question of approving or disapproving the Consolidated Plan, several members of the CSDB express concerns based on comments received from the community and express interest in postponing the vote to pass the Consolidated Plan until revisions could be made based on community input received. Bill Howerton, the Assistant City Manager, informs the Board that it there would not be enough time to revise the Consolidated Plan, have another meeting of the CDSB to vote on the plan, and hold a city council vote on the plan before the August 18, 2019 submission deadline to HUD. Ultimately, a CDSB member offers a motion to approve the plan with the caveat that the Consolidated Plan be revised in accordance with community concerns after the plan was submitted to HUD. The motion is voted upon - seven members vote in favor of adoption with this caveat and three members oppose.

- July 12, 2019
  - Texas Housers emails a letter to Director Murfee and Assistant City Manager Howerton reminding them of the city's AFFH obligation and asking the City to inform the CDSB that Director Murfee had incorrectly stated that that the AFFH obligation had been suspended, and that the City was statutorily obligated to AFFH. (See **Exhibit 11**)
- July 17, 2019 –
  - Texas Housers submits a public information request under the Texas Public Information Act for the Citizen Participation Plan required under 24 CFR 91.105., including the date the plan was adopted.
  - July 24, 2019 – The City of Lubbock replies to Texas Housers' July 17, 2019 public information request with a copy of the Citizen Participation Plan. The response does not include any information regarding the date the Citizen Participation Plan was adopted.
- July 22, 2019
  - Mayor Dan Pope signs required certifications for the Consolidated Plan, which included certifications that the City was affirmatively furthering fair housing and in compliance with relevant fair housing and civil rights laws and requirements.
- July 23, 2019
  - City Council passed a resolution adopting the Consolidated Plan and the Action Plan.
- July 29, 2019

- Texas Housers submits a public information request for documents related the publication of the Citizen Participation Plan required under 24 CFR 91.105. To date, Texas Housers has not received responsive information to this request.
- The City releases the final draft of Consolidated Plan. The draft includes responses to oral and written citizen comments. However, the City does not include or respond to comments on discriminatory industrial zoning. The Consolidated Plan states that certain comments were not accepted because they were “not relevant.”<sup>55</sup>

#### **IV. Specific Allegations**

##### **1. THE CITY OF LUBBOCK’S HAS VIOLATED 42 U.S.C. § 3604(A) AND 42 U.S.C. § 3601 ET SEQ. BY MAKING HOUSING UNAVAILABLE IN MAJORITY BLACK AND HISPANIC NEIGHBORHOODS, AND INTENTIONALLY PERPETUATING SEGREGATION.**

When it passed the 2040 Plan, the City of Lubbock violated 42 U.S.C. 3604(a) by discriminating against Black and Hispanic neighborhoods in East and North Lubbock by making housing unavailable in that area. The Plan concentrates industrial zoning and environmental hazards in these areas making housing unavailable under the FHA. The City’s actions stifle the housing market in these neighborhoods and limit housing mobility by depressing property values and restricting the ability of homeowners of color to purchase similar home protected by more favorable zoning. The City’s actions also retard needed retail and light commercial development and make it harder for existing and potential residents to obtain home repair loans and home purchase loans. Further, the zoning scheme deprives these neighborhoods on the basis of race of the benefit of federal funds for new housing construction because the high concentration of nearby environmental hazards renders these areas incompatible with government-sponsored housing construction under HUD siting standards pursuant to 24 CFR § 58.5 and Executive Order 12898.

##### **2. THE CITY OF LUBBOCK VIOLATED 42 U.S.C. § 3604(B) AND 42 U.S.C. § 3601 ET SEQ. BECAUSE IT DISCRIMINATED IN THE TERMS OF CONDITIONS, PRIVILEGES AND SERVICES IN CONNECTION WITH DWELLINGS IN MAJORITY BLACK AND HISPANIC NEIGHBORHOODS IN EAST AND NORTH LUBBOCK.**

When it passed the 2040 Plan, the City of Lubbock violated 42 U.S.C. § 3604(b) by discriminating against majority Black and Hispanic neighborhoods in the provision of services in connection with a dwelling. The 2040 Plan continues the City’s discriminatory practice of

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<sup>55</sup> CITY OF LUBBOCK, Consolidated Plan (2019) at 16.

concentrating industrial zoning and environmental hazards in an around neighborhoods that are majority Black and Hispanic while leaving majority white neighborhoods free from the economic burden and blight of industrial and heavy commercial land uses. A city’s power and obligation to use zoning to protect residential areas from environmental hazards and nuisances related to industrial land uses is a critical privilege and service connected to habitability, property value, and housing mobility.

- 3. THE CITY OF LUBBOCK HAS ENGAGED, AND CONTINUES TO ENGAGE, IN A PATTERN AND PRACTICE OF DENYING PERSONS THEIR RIGHTS UNDER THE FAIR HOUSING ACT ON THE BASIS OF RACE, COLOR, AND NATIONAL ORIGIN THAT SHOULD BE REFERRED TO THE DEPARTMENT OF JUSTICE FOR ENFORCEMENT UNDER 42 U.S.C. §3614.**
  
- 4. THE CITY OF LUBBOCK FALSELY CERTIFIED TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“HUD”) THAT IT IS AFFIRMATIVELY FURTHERING FAIR HOUSING (“AFFH”), PURSUANT TO 42 U.S.C. § 3608 AND EXECUTIVE ORDER 12892, IN THE ADMINISTRATION OF FEDERAL HOUSING AND COMMUNITY DEVELOPMENT DOLLARS PROVIDED BY HUD.**

On July 22, 2019, the City of Lubbock falsely certified to United States Department of Housing and Urban Development (“HUD”) that it is affirmatively furthering fair housing (“AFFH”), pursuant to 42 U.S.C. § 3608 and Executive Order 12892, in the administration of federal housing and community development dollars provided by HUD. The certification was inaccurate because the city failed to conduct an Analysis of Impediments to Fair Housing (“AI”) and Consolidated Plan pursuant to the community participation rules in 24 C.F.R. Part 91 and long-standing HUD guidance in the Fair Housing Planning Guide. Additionally, respondents deliberately ignored or attempted to shut down oral and written comments requesting that the city recognize its Zoning Code and the 2040 Plan Land Use Map as impediments to fair housing choice and commit to meaningful actions to overcome these impediments. Because these failures make it impossible for respondents to certify that they are AFFH, the AI and Consolidated Plan are substantially incomplete and inconsistent with fair housing and civil rights requirements. A plan that is substantially incomplete is subject to HUD disapproval under 24 C.F.R. § 91.500. Throughout the AI and Consolidated Plan process, the City of Lubbock also violated the following regulations:

- a. 24 CFR 91.000(a)(1) requiring the jurisdiction to consult with regionally-based organizations that represent protected class members;
  
- b. 24 CFR 91.105(a)(3) requiring the jurisdiction to give citizens a reasonable opportunity to comment on citizen participation plan and make it public;



- c. 24 CFR 91.105(b)(5) requiring the jurisdiction to consider any oral or written comments, provide a summary of these comments, and provide reasons why any were not accepted;
- d. 24 CFR 91.105(e)(1)(ii) requiring the jurisdiction to hold a public hearing before the Consolidated Plan is published for comment;
- e. 24 CFR 91.520(a) mandating that jurisdiction complete and release a CAPER annually;
- f. 24 CFR 91.225(b)(1) and (2) requiring a jurisdiction to certify that its public participation process was conducted in compliance with 24 CFR 91.105;
- g. 24 CFR 91.225(b)(6) requiring the jurisdiction to conducted and administer grants in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations; and
- h. 24 CFR 91.225(b)(2) requiring the jurisdiction to identify community development and housing needs and specify both short-term and long-term community development objectives that have been developed in accordance with the primary objective of the statute authorizing the CDBG program in its Consolidated Plan.

**5. THE CITY OF LUBBOCK HAS DISCRIMINATED UNDER 42 U.S.C. § 2000D AND 24 C.F.R. PART 91 BY DENYING PARTICIPATION IN, DENIAL OF BENEFITS OF, AND DISCRIMINATION UNDER FEDERALLY ASSISTED PROGRAMS ON THE GROUND OF RACE, COLOR, OR NATIONAL ORIGIN**

The City of Lubbock has discriminated under 42 U.S.C. § 2000d and 24 C.F.R. Part 91 by denying participation in, denial of benefits of, and discrimination under federally assisted programs on the ground of race, color, or national origin. The Consolidated Plan process dictates how federal housing and community development funds – including Community Development Block Grant (“CDBG”), HOME Investment Partnership Program (“HOME”) Emergency Shelter Grant (“ESG”) and Housing Opportunities for People with Aids (“HOPWA”) funds – are spent throughout the City of Lubbock. The City of Lubbock did not adequately provide complainants, Lubbock NAACP and Texas Housers, nor other groups representing protected classes, the ability to adequately participate in the Consolidated Plan and Analysis of Impediment to Fair Housing process despite HUD regulation mandating inclusion. The City’s resulting AI and Consolidated Plan do not address significant impediments to fair housing choice or provide equitable services to those persons, denying them participation in and the benefits of programs receiving federal financial assistance and discriminating against Complainants and other Lubbock residents on the basis of race, color, and national origin.

## **V. Remedies**

Complainants request that HUD take whatever actions are necessary to ensure that Respondents are complying with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the duty to Affirmatively Further Fair Housing, and related regulations. The Complainants ultimately seek the following from the Respondent.

1. Respondent must cease its discriminatory conduct and take all actions necessary to remedy its pattern and practice of discriminatory zoning and land use including, but not limited to:
  - a. Amending the 2040 Plan and Future Land Use Map to remove industrial and heavy commercial land uses from areas bordering residential neighborhoods to conform it to the character of those residential uses;
  - b. Creating a timetable and amortization schedule for eliminating nonconforming uses in downzoned areas bordering residential homes and neighborhoods during the Unified Development Code (“UDC”) process;
  - c. Creating and carrying out a long-term remediating plan for formerly industrial areas near neighborhoods; and
  - d. Funding and implementing the Neighborhood Planning Process once the UDC is complete.
2. Respondent must amend the 2019 Analysis of Impediments to Fair Housing by acknowledging that the concentration of industry near east and north side neighborhoods is an impediment to fair housing. Respondents should commit to the action steps listed above in the AI.

## **IV. Conclusion**

We thank you for your prompt attention to this complaint.

Respectfully,

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