



ANDREW M. CUOMO
Governor

Homes and Community Renewal

JAMES S. RUBIN
Commissioner/CEO

Division of Housing
and Community
Renewal

OFFICE OF HOUSING MANAGEMENT MEMORANDUM #2016-A-02

To: All Housing Authorities
Chairpersons and Executive Directors

From: Robert Damico, Director
Office of Housing Management

Date: August 15, 2016

Subject: Community Preferences and Duration Requirements

This memo requires each housing authority to review and justify any local occupancy preference presently in place.¹ Even if a housing authority has an established process for reviewing applications for preference, such a policy needs to be re-examined by the housing authority. The purpose of the re-examination is to ensure that any such residency preference does not violate the Fair Housing Act or NY State anti-discrimination laws.

Public housing authorities are created as corporate and political entities by the New York State Legislature and have a responsibility to the public and the local community. See Public Housing Law ("PHL") § 3(2) and Articles 3 and 13; 9 N.Y.C.R.R. §§ 1625-2.1 and 2.2.

An authority may have bona fide residency requirements for occupancy. See 9 N.Y.C.R.R. § 1627-3. However, the actual preferences required by law are limited, see Public Housing Law § 17, and these authorizing provisions must be viewed in light of the broad proscription of Public Housing Law § 223 which provides that for all purposes of the PHL "no person shall, because of race, creed, color, or national origin, be subject to any discrimination." Federal and New York State fair housing laws further prohibit discrimination on the basis of age, religion, sex, gender identity, marital status, disability, familial status, sexual orientation, or military status.

For its federally assisted public housing portfolio, the U.S. Department of Housing and Urban Development (HUD) has established policies that seek to balance the local needs which Housing Authorities meet while prohibiting discrimination. HUD's process is useful for ascertaining the extent to which a local preference may be appropriate and legal. It must be noted that, in addition to housing practices that are intentionally discriminatory, a violation of the Fair Housing Act can occur where a housing practice results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.²

¹ Although DHCR only regulates admission policies for state-aided projects, this memorandum is based on federal fair housing case law and parallel federal public housing provisions. As such, housing authorities which operate both state and federally aided projects should consider whether to follow similar procedures for its federally aided projects.

² See *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015); See also 24 C.F.R. § 100.500.

Moreover, a local occupancy preference cannot be based on the length of time an applicant has lived or worked in an area in order to qualify for the preference. See 24 C.F.R. § 982.207(b)(1)(iv). PHA local preferences and admission to its program and are outlined in 24 C.F.R. § 982.207. As with state projects, allowable local preferences under the federal statute are limited: Any PHA policy of local preferences must be based on local housing needs and priorities, as determined by the PHA. In determining such needs and priorities, the PHA must: (i) use generally accepted data sources, (ii) consider public comment on such a proposed public housing agency plan, and (iii) be based on the Consolidated Plan for the relevant jurisdiction.

These guidelines as set forth below, provide an appropriate basis for the review required by this memorandum.

FIRST: Any local preference needs to be based on an assessment of local housing needs with due regard for its potential of disparate impact or intentional discrimination. There must be a review against generally acceptable data sources to ascertain the need and appropriateness of a local residency preference. Such review must be performed by the Housing Authority.

Any Housing Authority seeking to continue a local occupancy preference must do so by amended resolution that specifically demonstrates that in allowing such a preference the Authority has sought to balance local needs using actual data sources with their legal obligation to prevent discriminatory impact and intentional discrimination.

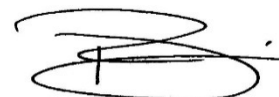
Local selection preferences in housing markets characterized by patterns of residential segregation or other barriers to housing opportunities for individuals on the basis of their protected status under federal and/or New York State fair housing laws must be reviewed with greater scrutiny and justified in light of such patterns and existing barriers. A local preference that on its face does not appear to be directed toward discrimination against a particular group may nonetheless disproportionately affect people based on race, ethnicity or other protected status. Failure to adequately examine the potential and actual discriminatory impact of local preferences could leave the Authority open to legal challenge and possible violations of fair housing laws.³

SECOND: No durational requirement for a local occupancy preference can be used under any circumstances.

Any housing authority that seeks to continue a local occupancy preference as part of a tenant selection plan must reflect this proper change in policy as it relates to community and duration requirement preferences.

New York State Homes and Community Renewal staff is available to provide assistance, informational materials and training to ensure your compliance with these two requirements.

For any questions regarding the implementation, please contact Thomas Lipovetsky at (212) 480-7472 or Thomas.Lipovetsky@nyshcr.org.



Robert Damico

³ See *United States vs. Town of Oyster Bay, et al.*, 66 F. Supp. 3d 285 (E.D.N.Y. 2014).