Appendix VII

City of Austin's Analysis of Impediments to Fair Housing (2009)

Fair Housing Analysis

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Submitted to the City of Austin

BBC Research & Consulting

Fair Housing Analysis

Introduction

This section contains an update to the analysis of impediments to fair housing choice in Austin. This includes analysis of the following:

- Home Mortgage Disclosure Act (HMDA) data that highlight fair lending concerns;
- Legal cases and actions within Austin and other Texas communities related to fair housing;
- Fair housing complaint process;
- Citizen input about fair housing issues;
- Rental and housing affordability; and,
- A City policy and procedure review, which primarily includes input from affordable housing developers.

Analysis of Impediments Background

This section is the Analysis of Impediments to Fair Housing Choice (AI) for the City of Austin. The AI is a U.S. Department of Housing and Urban Development (HUD) mandated review of impediments to fair housing choice in the public and private sector. The AI is required for the City of Austin to receive federal housing and community development block grant funding.[1]

The AI involves:

- A review of a City's laws, regulations, and administrative policies, procedures and practices;
- An assessment of how those laws, policies and practices affect the location, availability and accessibility of housing; and
- An assessment of public and private sector conditions affecting fair housing choice.

According to HUD, impediments to fair housing choice are:

- Any actions, omissions, or decisions *taken because of* race, color, religion, sex, disability, familial status or national origin that restrict housing choices or the availability of housing choices.
- Any actions, omissions or decisions that have the effect of restricting housing choices or the availability of housing choices *on the basis of* race, color, religion, sex, disability, familial status or national origin.

[1] The City is also required to submit a Consolidated Plan for Housing and Community Development and an annual performance report to receive funding each year.

Although the AI itself is not directly approved or denied by HUD, its submission is a required component of a City's or state's Consolidated Plan for Housing and Community Development (Consolidated Plan) performance reporting. HUD desires that AIs:

- Serve as the substantive, logical basis for fair housing planning;
- Provide essential and detailed information to policy makers, administrative staff, housing providers, lenders, and fair housing advocates; and
- Assist in building public support for fair housing efforts both within a City's boundaries and beyond.

Fair Housing Act

The Federal Fair Housing Act, passed in 1968 and amended in 1988, prohibits discrimination in housing on the basis of race, color, national origin, religion, gender/sex, familial status and disability. The Fair Housing Act covers most types of housing including rental housing, home sales, mortgage and home improvement lending, and land use and zoning. Excluded from the Act are owner-occupied buildings with no more than four units, single family housing units sold or rented without the use of a real estate agent or broker, housing operated by organizations and private clubs that limit occupancy to members, and housing for older persons[2].

HUD has the primary authority for enforcing the Federal Fair Housing Act. HUD investigates the complaints it receives and determines if there is a "reasonable cause" to believe that discrimination occurred. If reasonable cause is established, HUD brings the complaint before an Administrative Law Judge. Parties to the action can also elect to have the trial held in a federal court (in which case the Department of Justice brings the claim on behalf of the plaintiff)[3].

*Local fair housing ordinance***.** The City of Austin has adopted a local fair housing ordinance with protections that essentially mirror the Federal Fair Housing Act. In addition, Austin also protects residents against housing discrimination based on their sexual orientation, gender identity and student status.

Community profile. The socioeconomic analysis for the AI was completed in conjunction with that required for the Consolidated Plan. The community profile includes maps showing geographic distributions of households by race and ethnicity and income. In general, minorities and low income residents live in east and southeast Austin. Please refer to the Community profile for information on Austin's community profile in Section 2.

Fair Lending Analysis

Community Reinvestment Act (CRA) ratings and Home Mortgage Disclosure Act (HMDA) data are commonly used in AIs to examine fair lending practices within a jurisdiction. Fair housing complaint data are important to pinpoint the types of discrimination that are most

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[2] "How Much Do We Know? Public Awareness of the Nation's Fair Housing Laws", The U.S. Department of Housing and Urban Development, Office of Policy and Research, April 2002.

[3] Ibid.

prevalent and detect improvements or deterioration in fair housing conditions. Used in conjunction, these data sets can identify and then diagnose the reason for potential or existing housing discrimination. Each data set is reviewed in the following text.

*CRA review***.** The Federal CRA requires that financial institutions progressively seek to enhance community development within the area they serve. On a regular basis, financial institutions submit information about mortgage loan applications as well as materials documenting their community development activity. The records are reviewed as part of CRA examinations to determine if the institution satisfied CRA requirements. The assessment includes a review of records as related to the following:

- Commitment to evaluating and servicing community credit needs;
- Offering and marketing various credit programs;
- Record of opening and closing of offices;
- Discrimination and other illegal credit practices; and
- Community development initiatives.

The data are evaluated and a rating for each institution is determined. Ratings for institutions range from substantial noncompliance in meeting credit needs to an outstanding record of meeting a community's credit needs.

Of the 6 Austin banks where CRA examinations were conducted since 2004, all had ratings of "satisfactory." [4]

HMDA data analysis. The best source of analysis of mortgage lending discrimination is Home Mortgage Disclosure Act, or HMDA, data. HMDA data consist of information about mortgage loan applications for financial institutions, savings banks, credit unions, and some mortgage companies.[5] The data contain information about the location, dollar amount, and types of loans made, as well as racial and ethnic information, income, and credit characteristics of all loan applicants. The data are available for home purchases, loan refinances, and home improvement loans.

HMDA data provides how banks handle the mortgage lending process, as well as how applicants fare within the process. These data can be used to identify areas of potential concern that may warrant further investigations. For example, by comparing loan approval rates of minority applicants with non-minorities who have similar income and credit characteristics, areas of potential discrimination may be detected.

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4 Community Reinvestment Act (CRA) Performance Ratings: http://www2.fdic.gov/crapes/.

5 Financial institutions are required to report HMDA data if they have assets of more than $32 million, have a branch office in a metropolitan area, and originated at least one home purchase or refinance loan in the reporting calendar year. Mortgage companies are required to report HMDA if they are for-profit institutions, had home purchase loan originations exceeding 10 percent of all loan obligations in the past year, are located in an MSA (or originated five or more home purchase loans in an MSA) and either had more than $10 million in assets or made at least 100 home purchase or refinance loans in the calendar year.

The Federal Reserve is the primary regulator of compliance with fair lending regulations. When federal regulators examine financial institutions, they use HMDA data to determine if applicants of a certain gender, race, or ethnicity are rejected at statistically significant higher rates than applicants with other characteristics. The Federal Reserve uses a combination of sophisticated statistical modeling and loan file sampling and review to detect lending discrimination. Recently, the Federal Reserve began requiring banks to provide the rate spread above a certain annual percentage rate (APR) data for subprime loans. As such, HMDA data can now be used to examine differences in subprime pricing among borrowers of various races and ethnicities.

This analysis is twofold. It analyzes two types of 2007 loan data:

- Loans applications submitted to banks with their home office in Austin from residents of Austin and from residents not from Austin. This analysis is an examination of the performance of Austin-based banks; and
- Loans applied for by residents of Travis County, which serves as a geographic proxy for the City of Austin.[6] This helps determine how Austin-area residents fared when applying for loans, both with banks in Austin and elsewhere in the U.S.

This analysis approach helps determine whether local banks are more or less likely to favor local and/or non-local applicants. Additionally, it helps determine whether Austin-area residents have difficulty obtaining mortgages from both local and non-local banks.

Types of loans

- *Austin Banks*. Of the over 65,000 loan applications submitted to Austin-based banks, 78 percent of them were for conventional loan products. An additional 17 percent of loans were for FHA-insured products and the remaining portion of the loans were for VA-guaranteed loans. Eighty-four percent of loans applied for with Austin banks were for home purchases. Thirteen percent of loans were refinances and the remaining loans were for home improvement projects.

- *Residents*. Sixty-six percent of loans applied for by Travis County residents were for home purchases, and an additional 27 percent of loans were refinances of existing loans. The remaining loans applications were for home improvements.

  Conventional loan products comprised a vast majority of the loans applied for by Travis County residents (93 percent).

Race/ethnicity of loan applicants

- *Austin Banks*. Loan applicants of Austin-based banks were primarily white (74 percent), followed by African American (9 percent) and Asian (6 percent). Ten percent of applicants did not provide racial information.

[6] Raw data for the Loan Application Register (LAR) is only available on a country-level. Institutional data is available on a City level.

Seventy-five percent of applicants ethnically identified themselves as non-Hispanic and 16 percent identified themselves Hispanic. The remaining applicants did not provide ethnic information.

- *Residents.* Sixty-five percent of Travis County residents applying for loans were white, followed by Asian (5 percent) and African American (4 percent). Racial data was either not reported or deemed not applicable for 25 percent of Travis County applicants.

  Sixty-one percent of residents applying for mortgages considered themselves non-Hispanic, while 15 percent were Hispanic. The remaining applicants did not report information on ethnicity.

Loan amounts

- *Austin Banks.* In 2007, the average loan amount applied for with an Austin-based bank was $204,000. Loan amounts varied by race. Asian applicants had the highest average loan amount of $232,000. White applicants had an average loan amount of $185,000, and African American had an average loan amount of $163,000.

  The difference in the average loan amount for non-Hispanic and Hispanic applicants was small; the average loan amount for non-Hispanic applicants was $188,000 and $171,000 for Hispanic applicants.

- *Residents.* The overall average loan amount for Travis County applicants was $179,000. Loan amounts varied little by race for residents of Travis County. The average loan amount for white applicants was $175,000, as compared to $167,000 for Asian applicants and $133,000 for African American applicants. The highest loan average was $242,000, which was for applicants whose race was considered "not applicable". Race data is deemed "not applicable" when the reporting institution purchased a loan and the racial data was unavailable.

  The loan amount did vary by ethnicity for Travis county loan seekers. Loans for non-Hispanic residents averaged $182,000 in 2007, as compared to $123,000 for Hispanic residents.

Disposition of loans

- *Austin Banks.* Forty-eight percent of loans applied for at Austin-based banks originated. One of every 3 loans applied for at an Austin bank was purchased from another institution. Additionally, seven percent of loans were withdrawn by the applicant after submission, and 7 percent of applications were denied. Five percent of applications were approved by the bank, but were not accepted by the applicant.

  The outcome of loan applications varied by race and ethnicity. Exhibit II-1 on the following page displays the action taken on the loan by race and ethnicity by Austin lending institutions in 2007. Although white applicants had a relatively low denial rate, they also had one of the lowest loan origination rates. Overall, thirty-five percent of loans purchased from another institution were from white applicants. The highest denial

rates were given to American Indians, which contain a very small proportion of overall applications, and African Americans.

Exhibit II-1
Action Taken on Loan by Race/Ethnicity, Austin Lending Institutions, 2007

	Approved/Not Accepted	Denied	Application Withdrawn by Applicant	Incomplete	Originated	Loan Purchased
Race						
American Indian or Alaska Native	5%	13%	10%	0%	59%	14%
Asian	6%	7%	10%	1%	55%	21%
Black or African American	5%	11%	5%	1%	53%	25%
Information not provided	5%	11%	9%	1%	38%	37%
Native Hawaiian or Other	5%	7%	9%	1%	59%	19%
Not applicable	0%	2%	0%	0%	96%	2%
White	5%	6%	7%	1%	48%	35%
Ethnicity						
Hispanic or Latino	6%	12%	8%	1%	51%	22%
Information not provided	4%	11%	9%	0%	34%	41%
Not applicable	0%	3%	2%	0%	93%	2%
Not Hispanic or Latino	4%	5%	7%	1%	49%	34%

Source: FFIEC HMDA Raw Data 2007 and BBC Research & Consulting.

- *Residents*. Overall, residents of Travis County applying for a mortgages found the following results:
  - 42 percent of loan applications of Travis County residents were approved;
  - 1 in 4 applications were purchased by the bank receiving the application; and
  - 16 percent of applications were denied.

  African Americans experienced higher levels of denial than the overall Travis County population, as nearly 1 in every 3 African American applicant was denied. An additional 33 percent of African American applications originated.

Exhibit II-2.
Action Taken on Loan by Race/Ethnicity, Travis County Resident Loan Applications, 2007

	Approved/Not Accepted	Denied	Application Withdrawn by Applicant	Incomplete	Originated	Loan Purchased
Race						
American Indian or Alaska Native	6%	37%	10%	4%	32%	12%
Asian	8%	15%	6%	2%	48%	21%
Black or African American	5%	34%	13%	3%	33%	12%
Information not provided	7%	22%	15%	4%	39%	13%
Native Hawaiian or Other	9%	26%	9%	3%	39%	15%
Not applicable	0%	0%	0%	0%	3%	97%
White	7%	15%	8%	2%	50%	18%
Ethnicity						
Hispanic or Latino	6%	26%	10%	3%	40%	14%
Information not provided	7%	20%	14%	4%	38%	16%
Not applicable	0%	0%	0%	0%	3%	97%
Not Hispanic or Latino	7%	15%	8%	2%	50%	18%

Source: FFIEC HMDA Raw Data 2007 and BBC Research & Consulting.

Application denial – Why are loan applications denied?

- *Austin Banks.* Austin-based banks primarily denied loan applications due to poor applicant credit history and a bad debt-to-income ratio.

- *Residents.* The rationale for denying loan applications of Travis County residents was more diverse. Thirty percent of denials were because the applicant had a poor credit history. A poor debt-to-income ratio, little collateral, an incomplete application, and reasons categorized as "other" equally comprised the remaining reasons for loan denial.

Exhibit II-3 provides the overall denial for both Austin-based banks and residents of Travis County.

Exhibit II-3.
Overall Application Denial Rates by Reasons for Denial

Banks	Number	Percent	Travis County Residents	Number	Percent
Collateral	121	3%	Collateral	1,467	16%
Credit application incomplete	95	3%	Credit application incomplete	1,114	12%
Credit history	1,354	38%	Credit history	2,924	31%
Debt-to-income ratio	1,109	31%	Debt-to-income ratio	1,456	15%
Employment history	170	5%	Employment history	170	2%
Insufficient cash	151	4%	Insufficient cash	170	2%
Mortgage insurance denied	5	0%	Mortgage insurance denied	12	0%
Other	352	10%	Other	1,559	16%
Unverifiable information	224	6%	Unverifiable information	585	6%
Total	3,581	100%	Total	9,457	100%

Source: FFIEC HMDA Raw Data 2007 and BBC Research & Consulting.

Application denial – Who is getting denied?

Potential racial or ethnic lending discrimination becomes more apparent as applicants earn higher incomes. It is assumed that the greater the income, the less likely an applicant is to have a poor credit score or a poor debt-to-income ratio, which are both prevalent reasons for loan denial. Thus, this analysis considers the distribution of loan denials for applicants earning greater than $103,000, or 150 percent of HUD's Median Family Income (MFI) of $69,100 to determine whether a certain racial or ethnic group has experienced higher denial rates.

- *Austin Banks.* Loan denials of Austin-based banks disproportionately favored non-white applicants. For example, Asians applicants attributed to 8 percent of all applicants earning greater than $103,000. However, Asian applicants represented 14 percent of all loan denials of applicants earning $103,000 or more. White applicants accounted for 74 percent of applicants earning 150 percent of the MFI or more, yet accounted for 60 percent of the denials.

  The disparity of denials by Austin-based banks was more pronounced when examined by ethnicity. Hispanic applicants accounted for 9 percent of high-earning applicants. However, 19 percent of denials of high-income applicants were for Hispanic applicants.

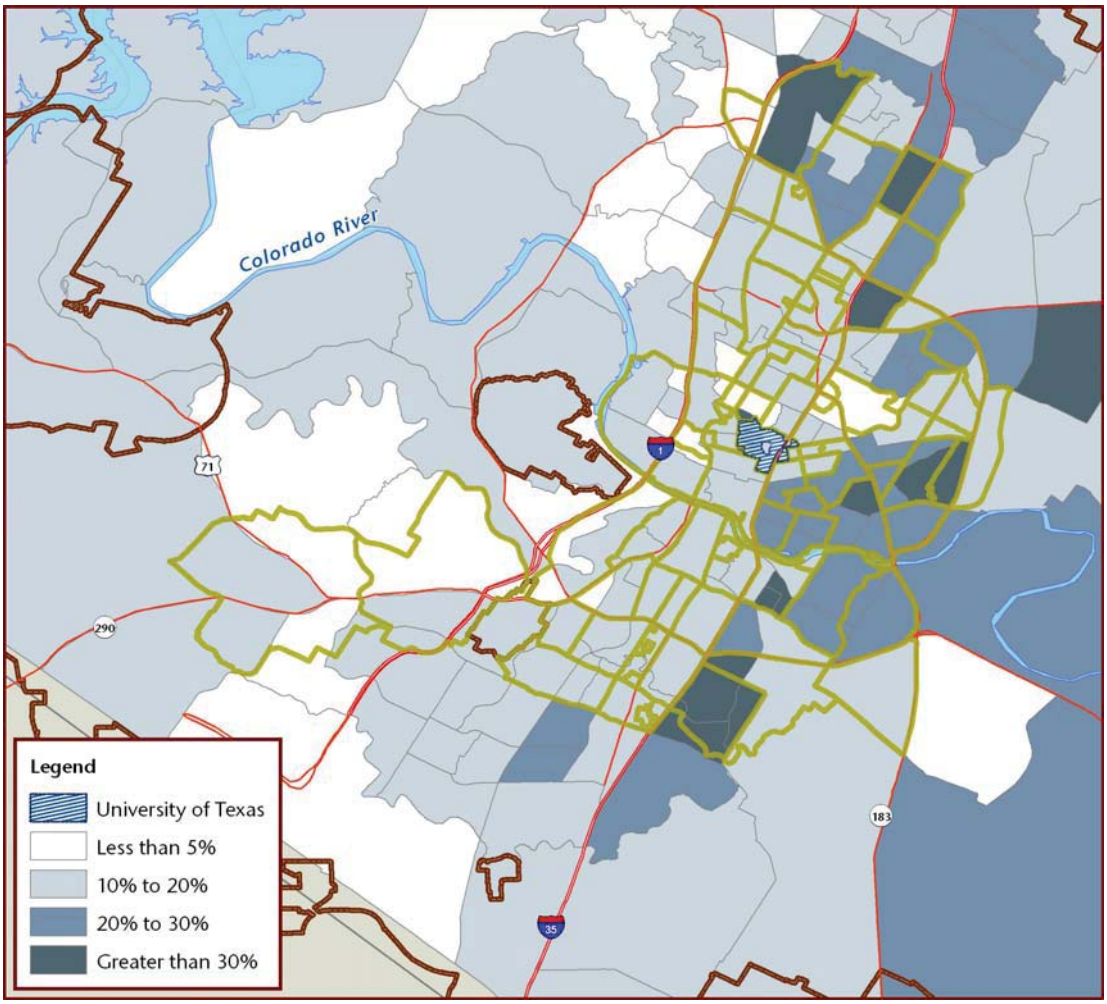
- *Residents.* For Travis County applicants, the disparities in loan denial by race and ethnicity became slightly more common once the applicant incomes rose to 150 percent of the AMI, or, greater than $103,000. Although African Americans contributed to 2 percent of total applications, they contributed to 4 percent of loan denials by race. White applicants contributed to 72 percent of Travis County applicants earning $103,000 or more, but accounted for only 69 percent of denials.

  Similarly, Hispanic applicants accounted for 7 percent of total applicants earning 150 percent or more of the AMI. However, they accounted for 11 percent of the overall number of applicants.

Application denial – Is loan denial geographically concentrated?

- *Residents.* Application denials for residents of Travis County were much higher in the eastern and southeastern neighborhoods. Census Tracts falling within Franklin Park, McKinney, Riverside, Govalle and MLK-183 saw denial rates of 30 percent or more. Exhibit II-4 displays loan denials by Census Tract. These portions of Austin have higher concentrations of African American and Hispanic residents.

Exhibit II-4.
Loan Denials by Census Tract, Travis County, 2007



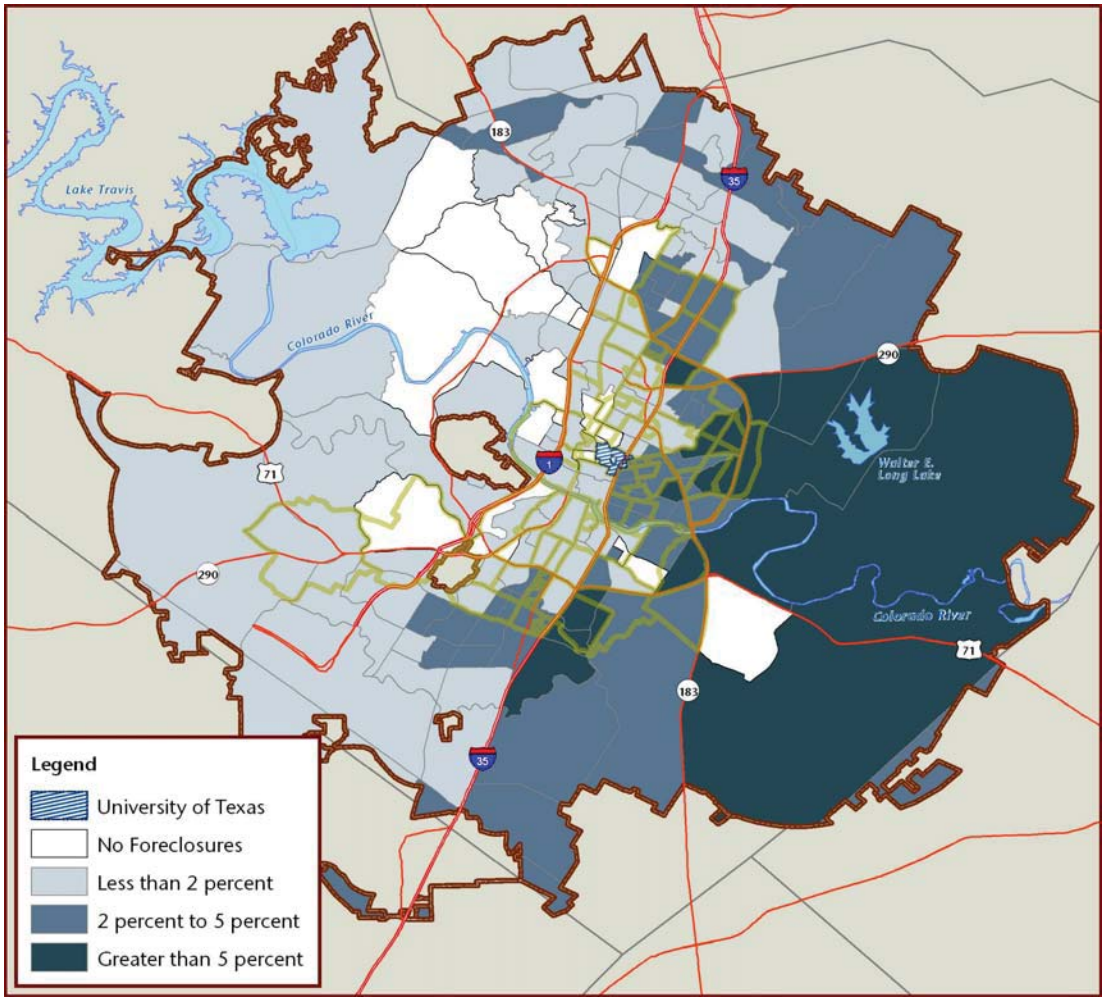
Source: FFIEC HMDA Raw Data 2007 and BBC Research & Consulting.

Foreclosures, Subprime Lending and Predatory Lending

Related to the rise in foreclosures is a growing concern about predatory and subprime lending. This section explores these issues in Austin.

Foreclosures. Overall, Austin has not been plagued with the volume of foreclosures that cities like Denver, Las Vegas and Phoenix have experienced. Rather, foreclosures in Austin have been very geographically specific. Far east and south Austin neighborhoods contain the highest levels of foreclosures within the City, indicating the correlation in Austin between low income households and foreclosures. Exhibit II-5 displays the percentage of foreclosures by Census Tract.

Exhibit II-5.
Percentage of Foreclosures by Census Tract, Austin, 2008



Note: Number of foreclosures divided by the total number of mortgages.
Source: Department of Housing & Urban Development HUD User website.

*Subprime Lending and Predatory Lending***.** One of the fastest growing segments of the home mortgage industry is subprime lending. From 1994 through 2003, subprime mortgage activity grew an average of 25 percent per year and accounted for $330 billion of U.S. mortgages in 2003, up from $35 billion a decade earlier. Subprime loans are marketed and sold to customers with blemished or limited credit histories who would typically not qualify for prime loans. Consequently, the rate of interest charged for each subprime loan is generally higher than that of a comparable prime loan, due to increased credit risk. When lenders analyze potential borrowers solely by their credit score, those with scores below 620 are viewed as higher-risk and are typically denied prime loans. However, almost half of subprime mortgage borrowers have credit scores above this threshold, indicating that even a good credit score does not ensure prime loan status.

The rapid growth in popularity of subprime lending has brought increased scrutiny to the industry, resulting in two disparate views of the practice. On the one hand, subprime loans give individuals and families an opportunity for homeownership that they might not have had in the past. Some primarily credit the nearly 9-million-household increase in

homeownership during the past decade to the rise of subprime loans. On the other hand, the higher rates of interest charged on subprime loans lead to higher rates of foreclosure and serious delinquency. For example, for mortgage loans outstanding at the end of 2003, 1 percent of prime loans were seriously delinquent, compared with 7 percent of subprime loans. In addition, opponents of subprime lending emphasize that subprime borrowers are disproportionately of minority status, of lower income, and are less well educated than prime borrowers, indicating possible targeting of those less likely to fully understand the risks associated with a subprime loan. Fannie Mae CEO Franklin Raines captured this dilemma quite accurately in a recent speech: "Done right, subprime lending provides an important source of mortgage financing for families with imperfect financial or credit histories. Done wrong, subprime lending is a huge rip-off that siphons wealth—and hope—from people who have very little to begin with."

Of the approximately 35,750 loans that originated for Travis County residents, 12 percent of those loans were considered subprime loans.

There is no one definition that sums up the various activities that comprise predatory lending. In general, predatory loans are those in which borrowers are faced with payment structures and/or penalties that are excessive and which set up the borrowers to fail in making their required payments. Subprime loans could be considered as predatory if they do not accurately reflect a risk inherent in a particular borrower.

It is difficult to identify and measure the amount of predatory lending activity in a market, largely because the industry is unregulated. In addition, predatory activity is difficult to uncover until a borrower seeks help and/or recognizes a problem in their loan. Because it is difficult to determine who is targeted for predatory lending, analysis of those receiving subprime loans provides more insight into demographics potentially more susceptible to predatory lending.

Travis County African American residents are more likely to receive subprime loans than other racial groups. African Americans applications comprised 3 percent of all loan originations, but represented 8 percent of applicants holding subprime loans.

Hispanics were also far more likely to receive a subprime loan than non-Hispanic applicants. Hispanic applicants comprised 60 percent of all approved loans; however, Hispanic applicants held 73 percent of subprime loans.

Exhibit II-6.
Race and Ethnicity of Subprime loan applicants, Travis Count, 2007

	Count of Subprime	Percent of Subprime	Count of All Applications	Percent of All Applications
Race				
American Indian or Alaska Native	39	1%	160	0%
Asian American	144	3%	1,941	5%
Black or African American	326	8%	1,245	3%
Information not provided	592	14%	4,667	13%
Native Hawaiian or Other	14	0%	108	0%
Not applicable	7	0%	240	1%
White	3,086	73%	27,389	77%
Total	4,208	100%	35,750	100%
Ethnicity				
Hispanic or Latino	1,161	28%	5,048	14%
Information not provided	518	12%	4,259	12%
Not applicable	7	0%	251	1%
Not Hispanic or Latino	2,522	60%	26,192	73%
Total	4,208	100%	35,750	100%

Source: FFIEC HMDA Raw Data 2007 and BBC Research & Consulting.

Examining the demographic composition of subprime mortgage recipients does not consider credit worthiness, such as credit score or existing debt levels. Therefore, one can not automatically assume that certain racial or ethnic groups have been unjustifiably offered subprime mortgages.

Differences in average household income do explain some of the prevalence in subprime loans among African American and Hispanic applicants. However, as noted earlier, even when income is normalized across racial and ethnic groups, loan denial is still higher for non-white applicants.

African American subprime recipients in Travis County have an average income of $87,000, as compared with an average household income of $115,000 white subprime mortgage holders. Non-Hispanic applicants with subprime loans had an average annual income of $128,000 and Hispanic subprime loan recipients had an average $86,000.

Legal Cases

As part of the fair housing analysis, legal cases involving fair housing issues were reviewed to determine significant fair housing issues and trends in Austin (MSA). Case searches were completed using the National Fair Housing Advocate's case database and the U.S. Department of Justice's fair housing database.

The legal cases presented in the databases include those that involved a court decision and have been reported to legal reporting services. (Open or ongoing cases would not be

represented unless a prior court decision on the case has been made.) Additionally, disputes that are settled through mediation are not included in the reported cases.

The cases summarized below highlight recent fair housing issues that have been brought to court. Not all cases occurred within the City of Austin, but all did occur within Texas. Summary information on all cases is included to highlight recent trends and primary issues in fair housing litigation in the metro area. Cases are divided into the following categories: land use, lending, reasonable accommodations and disabilities and race-based discrimination.

Land use

Lund v. Leibl (1999). The Lunds and the Leibels owned two of three lots within the Bishop's Bend Subdivision. Usage of the lots within the subdivision is limited by a number of deed restrictions, such as using the property for single family residential usage and complying with a number of other building requirements, such as dwelling size and other exterior facade standards. The Lunds own and operate Westlake Assisted Living (WAL), L.L.C. on their property within Bishop's Bend.

A lawsuit was brought upon the Lunds and WAL by the Leibels, seeking an injunction to cease construction of the WAL, as well as on using the property as an assisted-living facility. A reverse lawsuit was filed by the Lunds, citing that the injunction discriminated against the elderly, thereby violating the Fair Housing Act.

The despite expert witnesses testifying that the assisted living facility was both in defiance of the single family deed restriction and would negatively affect home values within the subdivision, the Fair Housing Act "trumped" the single family deed restriction in place at the subdivision, therefore making the injunction improper. However, when asked to prove that the facility would specifically serve residents with handicaps, the Lunds could only prove the facility would be for elderly residents and would specifically address the care associated with older age. Thus, as a result, construction on the facility was not completed, nor was the assisted living facility opened. However, this was not because abidance of the Fair Housing Act was deemed less important than land use codes, but rather, the inability of the Lunds to prove that the facility would directly serve residents with disabilities.

Lending

United States v. Security State Bank (1995). The complaint alleged that Hispanic loan applicants were receiving higher interest rates on loans than non-Hispanic applicants. As a result of this lawsuit, the bank created a $500,000 fund to compensate victims.

Reasonable accommodations/disabilities cases

United States v. JPI Apartment Construction, L.P., et al. (2009). On March 4, 2009, the United States filed a pattern or practice complaint in United States v. JPI Apartment Construction, L.P., et al. (N.D. Tex.). The complaint alleges that JPI failed to comply with the design and construction requirements of the Fair Housing Act (FHA) and ADA in the design and

construction of two multi-family housing complexes in Texas and some of JPI's other 205 nationwide multi-family properties.[7]

United States v. Air Park (2008). The complaint alleges that the members of the zoning committee and property owners of Air Park Estates, in Collin County, Texas, violated the Fair Housing Act by refusing to allow the complainant to keep a footbridge in front of her house. The complainant, who has a mobility disability, needs to use the bridge to reach the street without risk of injury.[8]

United States v. SDC Legend Communities, Inc., et al. (2006). This case was brought against architects, engineers, developers, builders and owners of two multi-family residential complexes in Austin financed through Low Income Housing Tax Credits (LIHTC), citing disability discrimination.

The order provides for retrofits of routes, entrances, and public and common-use areas, as well as interior retrofits in certain units and installation of enhanced accessibility features in others. The order also requires the defendants to establish a $50,000 fund which will be used to compensate individuals harmed by the inaccessible housing and to pay $10,000 in civil penalties to the government. The order also provides for injunctive relief, training, reporting and record keeping. The consent order will remain in effect for three years.[9]

United States v. Hous. Auth. of the City of San Antonio, et al. (2006). The complaint arose after the Mr. Maldanados, a double leg amputee who uses a wheelchair, and his wife, also disabled, asked to be moved from a third floor unit to a first floor unit and were denied, despite having first floor units available. The defendants were eventually moved to a first floor unit and were paid $125,000 in damages and attorney fees. The $125,000 also assisted a fair housing organization that aided the Maldonados to implement a reasonable accommodation policy and to attend fair housing training.

Race-based discrimination

United States v. Silva (2005). The complaint was made against the owners of 9 single family homes in Austin and San Antonio. It is believed that the defendants led Hispanics to believe that they were purchasing for sale properties. Instead, the tenants were entering into lease agreements for the properties. The 15 victims were awarded $103,651 in damages, $110,000 in civil penalties, and injunctive relief.

Fair Housing Complaint Process and Data

Two entities, the City of Austin Equal Employment and Fair Housing Office and the Austin Tenants Council (ATC) are responsible for receiving and investigating fair housing complaints within Austin.

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[7] Taken directly from Department of Justice legal summary.

[8] Taken directly from Department of Justice legal summary.

[9] Taken directly from Department of Justice legal summary

In 2008, over half of all fair housing complaints in Austin were regarding disability status. Familial and racial discrimination were the next more prevalent types of fair housing concern experienced in Austin.

City of Austin Equal Employment and Fair Housing Office. The Equal Employment and Fair Housing Office is "empowered to investigate complaints of discrimination, which includes the collection of evidence to either prove or disprove discrimination that occurred."[10] This office is responsible for enforcing the City's fair housing ordinance. When a complaint has been received, the office investigates the complaint to determine whether a formal complaint should be filed to HUD.

During the 2008 fiscal year, the City's fair housing office received and investigated 100 complaints. Fifteen complaints resulted in filing complaints with HUD, 30 were conciliated and the remaining cases were determined to be no cause.

The complaints were distributed in the following way:

- 51 complaints were from residents because of a disability
- 30 complaints were because of racial discrimination
- 20 complaints were from residents because of discrimination of their familial status
- 8 complaints were because of national origin
- 8 complaints were because of gender discrimination

Austin Tenants Council (ATC). The ATC was founded in 1973 and became a recognized Fair Housing Initiatives Program (FHIP) in 1992. According to HUD, "fair housing organizations and other non-profits that receive funding through the Fair Housing Initiatives Program (FHIP) assist people who believe they have been victims of housing discrimination." The ATC operates a number of programs, including a fair housing program (FHP) that "helps any person who has been discriminated against in the rental, sale, financing, or appraisal of housing." More specifically, the FHP "documents and investigates complaints; provides advice about remedies under fair housing laws; and coordinates legal services to assist victims of housing discrimination." The ATC is also very active in providing the community with fair housing information through seminars and presentations.[11]

In addition to fair housing, the ATC also provides telephone and in-person counseling, as well as mediation services to assist low-income renters with threatening repairs or other emergencies.

For the 2008 project year, extending from January 15, 2008, through January 14, 2009, the ATC had a complaint goal of 300. They received 365 actual complaints. The complaints were distributed by the following types of complaints received:

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[10] http://www.ci.austin.tx.us/hrights/

[11] http://www.housing-rights.org/fairhousing.html

- 54 percent (198) were complaints from individuals with disabilities;
- 30 percent (109) were complaints about discrimination for familial status;
- 7 percent (26) of complaints were discrimination against race; and
- the remaining complaints were with regards to national origin (14), gender (12), violation of City ordinances (5), and color (1).

Public Input

A stakeholder focus group was conducted with fair housing represented in Austin. Their input is summarized below. Additionally, in conjunction with the Austin Housing Market Study, a resident survey was completed, which asked residents about their experience with fair housing issues in Austin. Survey results also appear in this section.

Focus Group. A focus group of fair housing stakeholders was conducted in January of 2009 to discuss fair housing needs in Austin. Organizations represented at the focus group included the following (in alphabetical order):

- ADAPT
- Austin Apartment Association
- Austin Centers for Independent Living
- Austin Tenants Council
- Capstone Management
- Community Development Commission (CDC)
- Cypress International
- Family Eldercare
- Housing Authority of Travis County
- Human Rights Commission
- Mary Lee Foundation
- Mayor's Committee for Disabled Persons
- Re-Entry Roundtable
- United Cerebral Palsy of Texas

The following were the primary concerns raised by attendees of the fair housing focus group: affordability; the prevalence of unlicensed service providers; and, the need for transitional housing for renters unable to meet renter qualifications. Overall, fair housing stakeholders felt that problems associated with fair housing were compounded by the overall lack of housing affordable to Austin's extremely poor, which often consists of residents on fixed incomes. Thus, although some stakeholder concerns were not directly linked to fair housing, many problems faced by residents were their inability to find ample affordable housing opportunities.

*Affordability***.** The overall lack of extremely affordable rental properties, particularly those that are accessible to people with disabilities and senior citizens, was the primary concern voiced by many focus group attendees. Affordability was often defined as units affordable to residents earning 30 percent or less than the MFI, which often includes people living on fixed income, such as Social Security.

The overall sentiment of the group is that the overall lack of affordability causes residents needing such units to settle for unfair treatments from property owners and accept potentially substandard living conditions to ensure that they are able to stay in the unit that have secured.

*Unlicensed service providers***.** The group voiced concern over the prevalence of unlicensed group and boarding homes that provide housing and services for elderly individuals or disabled residents requiring help and additional services. Many homes accept social security payments directly, thereby stripping the resident of any sort of power from withholding rent and payments if service is substandard.

Although focus group participants did say that some homes, whether licensed or not, provide quality care and help fill a market niche, other facilities are very poor, which makes residents susceptible to abuse and exploitation.

Transitional housing. Although not directly linked to fair housing, stakeholders identified a need for assistance or additional housing opportunities for individuals with poor rental or credit history and criminal backgrounds. Stakeholders felt that renters in Austin should be given a second chance. Until credit is restored or criminal histories are cleared for residents, the City should help residents find housing. When the City doesn't intervene for these subsets of the population, fair housing violations become more rampant as residents are forced into difficult housing situations.

In sum, the focus groups primary concerns centered on affordability. When residents struggle with finding affordable units that meet their needs, particularly with regards to accessibility, fair housing issues arise as residents tolerate unnecessary conditions to retain their current living situation.

Citizen Survey. In conjunction with a survey for the March 2009 Austin Comprehensive Housing Study, BBC, with the assistance of Davis Research, conducted two citizen survey efforts to understand more about the housing needs of Austinites and their experience with fair housing and housing discrimination issues within Austin:

- *Telephone survey*. Between mid-November and early December, Davis Research interviewed 484 residents in Austin. The interviews were conducted to obtain two samples of Austin residents: 1) Those earning less than $55,000 per year; and 2) All Austin residents. About 7 percent of the surveys were completed in Spanish; the rest were completed in English.

- *Online survey*. Between mid-November and mid-December, an online survey was available on the City of Austin's Neighborhood Housing & Community Development website, which linked to a separate URL (www.cityofaustin.org/housing) that contained the survey. Respondents were able to complete and submit the 10 minute survey completely online. The survey was restricted to residents living within City boundaries and making less than $100,000 per year. 318 people completed the survey; 177 attempted to take the survey but were not able to complete it because they made more than $100,000 (104 attempts) or lived outside of Austin (73 attempts). All of the surveys were completed in English.

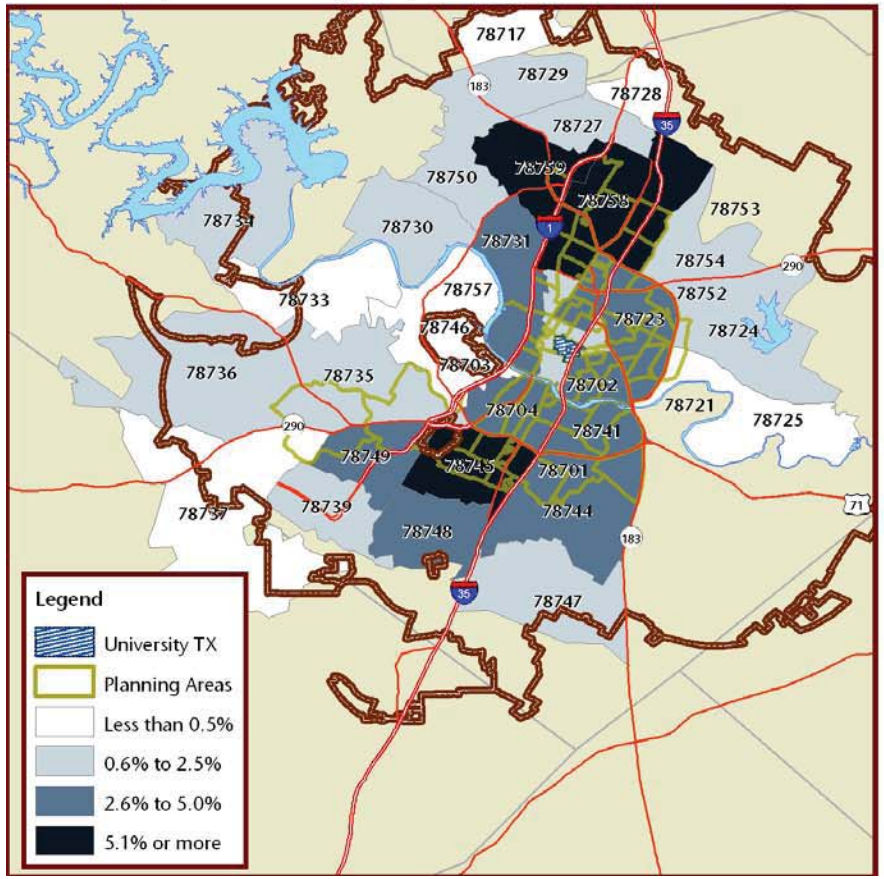
Compared to demographics for the City overall, the telephone survey captured more seniors and fewer younger households. The online survey captured more households between the ages of 25 and 44 and fewer seniors than live in the City overall.

Except for the low income subsample, both surveys captured more homeowners than renters. Sixty-six percent of the telephone survey respondents were owners. Fifty-nine percent of the online respondents were owners. This compares to a homeownership rate of 46 percent in the City. As such, the survey data were weighted to more accurately reflect tenure in the City.

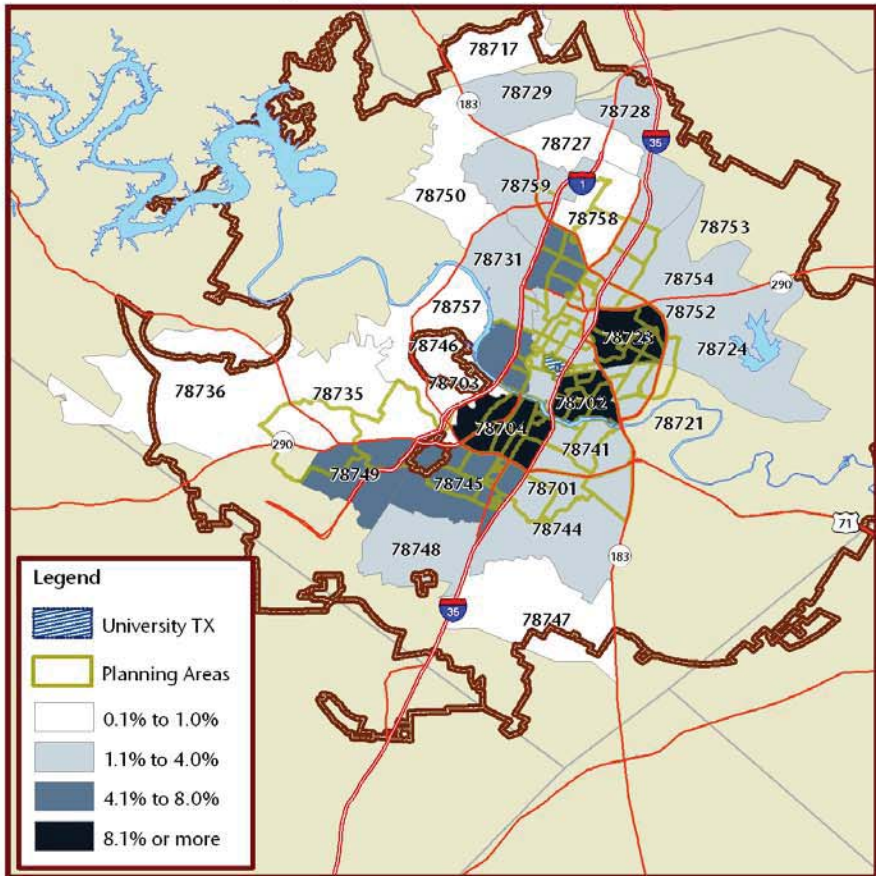
The following exhibit provides a geographic distribution of survey respondents.

Exhibit II-7.

Where Telephone Survey Respondents Live



Where Online Survey Respondents Live



Source: Austin Resident Surveys, 2008.

Thirteen percent of respondents to the telephone survey and 17 percent of online survey respondents said they had experienced discrimination in trying to find housing. Exhibit II-8 shows the main reasons respondents felt they had been discriminated against. It should be noted that not all of the reasons include protected classes under the Fair Housing Act—e.g., people cannot bring a case of discrimination based on income level or credit issues in most areas.

Exhibit II-8.
What was/were the reason(s) you feel you were discriminated against?

Source:
Austin Resident Surveys, 2008

	Telephone Survey	Online Survey
Age	4%	0%
I have a low income	6%	20%
I have bad credit/bankruptcy/debts	26%	3%
I have children	2%	7%
I'm gay/lesbian/bisexual/transgendered	2%	3%
I'm not a United States citizen	2%	0%
I'm physically disabled	5%	12%
My gender/sex	1%	8%
My religion	2%	3%
Not married (to partner)	0%	7%
Other	18%	7%
Race	33%	24%
Student	0%	8%

The majority of respondents who felt they had been discriminated against did nothing about it. Six to 10 percent filed a complaint.

Respondents were also asked what they would do if they wanted to know more about their fair housing rights. Most would look for information on the internet, as shown in Exhibit II-9. This was less true of low income respondents, who preferred to call a lawyer/consult legal aid or find information through local government sources.

Exhibit II-9.
If you wanted to know more about your fair housing rights, how would you get information?

Source:
Austin Resident Surveys, 2008

	Telephone Survey	Online Survey
Call a lawyer/ ACLU/ Legal Aid/ Attorney General's office	7%	14%
HUD website		12%
Internet search	37%	32%
Library	10%	4%
Local government information source/officials	13%	18%
Other	23%	10%
Public housing authority	7%	9%
TV	3%	1%

Affordability

A more in-depth discussion of affordability is included in the Housing Market chapter of the Consolidated Plan. However, the Austin Housing Market Study released in March of 2008 found the following with regards to affordability in Austin:

- About 35 percent of renters in Austin could afford the average priced rental unit of $843, which requires an annual household income of $34,000.
- In 2008, 21,700 renter households—13 percent of all renter households in Austin—earned less than $10,000. Austin has approximately 2,400 units and rental assistance vouchers for these households, which can afford a rent of approximately $175 per month—leaving a gap of 19,300 underserved households.
- Another 24,500 renter households earn between $10,000 and $20,000—14 percent of all renters. They need apartments with rents of between $175 and $425 to avoid being cost burdened. In 2008, these renters had approximately 4,750 affordable units and vouchers available to them, leaving a gap of 19,800 underserved households.
- About 13 percent of current renters in Austin and 53 percent of homeowners could afford the average price for sale unit could afford the average priced for sale unit.

Exhibit II-10.
Affordability of Median Priced Units to Renter and Owner Households, Austin, 2008

Source:
MLS and BBC Research & Consulting.

	All Units	Single Family Detached	Single Family Attached	Multifamily
Median Price	$240,000	$260,000	$199,000	$214,900
Renters	21,463	18,631	36,620	30,742
Percent	*13%*	*11%*	*22%*	*19%*
Owners	74,405	69,029	87,772	82,588
Percent	*53%*	*49%*	*62%*	*58%*

In sum, Austin's primary affordability problem exists for the lowest earning households seeking rental properties.

City Policy Review

This section examines barriers to affordable housing development in Austin. It contains the results of interviews that were conducted with stakeholders, focus groups with nonprofit and private developers. It also contains the results of interviews and a review of the policies and procedures of the City of Austin Housing Authority (HACA).

*Stakeholder Input***.** A series of stakeholders meetings were held in conjunction with the Austin Housing Market study, released in March of 2008. The stakeholder meetings were conducted by BBC Research & Consulting and focused on affordable housing opportunities and barriers within the City. Approximately 100 affordable housing developers, policymakers and advocates participated in the stakeholder meetings. The following summarizes their opinions with regards to City policies and procedures and community barriers with regards to developing affordable and special needs housing in Austin.

Regulatory barriers to developing affordable housing

- There is too little zoning for multifamily development.
- Site development costs are prohibitive because of the City's sewer requirements. There needs to be a less costly way to tie into the City's sewer system.
- Stricter building requirements aimed at environmental preservation have increased building costs substantially, directly impacting housing affordability.
- The 23 separate ordinances related to development in the past 18 months demonstrate the regulatory burden that raises development costs.
- The development process requires working with multiple departments and individuals. It is tough to find anyone in the City who is willing to make a decision. The common response is "this isn't my area of expertise."
- Neighborhood planning is inconsistent.
- Overall, developers feel that the SMART ™ Housing program is not as streamlined as it should be, given that one of the incentives is staff assistance. Developers feel that no one City department took ownership of the program.
- Many affordable housing developers would like to see a streamlined City approval process, which would, in turn, lessen their carrying costs on projects.

Community barriers

- Powerful neighborhood associations make affordable projects very difficult.
- City neighborhoods don't have the resources as private sector developers. The City should give the neighborhoods full-time advocates to negotiate development specifications (Portland has such a program).
- The lack of an overall planning vision constrains the amount of development that occurs.
- The City has a lack of altruistic developers and community commitment.
- Condominium conversions remove low income rental properties from the market through conversion processes.

Explicit change in City zoning

- No more cumulative zoning
- Stop neighborhood backlash against multi-use zoning
- Need a more "big picture" land use code/Overall Zoning
- A streamlined development process. It can't continue to take years to get a development approved.

Summary Findings and Impediments

The following provides a summary of analysis, the identified impediments and fair housing recommendations.

Findings

*Home Mortgage Disclosure Act (HMDA) Analysis***.** The HMDA analysis was two-fold, analyzing mortgage activity of Austin-based banks, as well as analyzing loan applications submitted by Travis County residents.

Austin banks appear to handle a relatively homogenous product of loan applications, primarily receiving applications for conventional loans for home purchases. Travis County residents also primarily applied for conventional loans, but had a higher percentage of refinances and home improvement loans than was seen by Austin banks.

Racial composition of loans was difficult to determine, as nearly 25 percent of Travis County residents did not report their race. Loan application amounts received by Austin banks were typically higher than loans applications submitted by local residents. A smaller loan amount differential existed by race and ethnicity for Austin banks, than existed for Travis County residents, meaning that Travis County residents applying for loans were more diverse financially.

Austin banks had a very low denial rate (7 percent), as most applications received by Austin banks were either approved or purchased from another institution, which does not require approval. Denial rates were much higher for Travis County residents at 16 percent. More specifically, denial rates for African American and Hispanic applicants from Travis County were substantially higher than those seen at local banks.

Austin banks primarily denied applications due to poor credit history and a bad debt-to-income ratio. Reasons for denial varied more for Travis County applicants; 16 percent of denials were due to a lack of collateral and an additional 12 percent of applications were denied due to an incomplete application. Loan denials of Travis County applicants were more concentrated in the eastern and southeastern portions of the City.

Of the nearly 36,000 loan applications submitted by Travis County residents in 2007, 12 percent were considered subprime. African American and Hispanic applicants were more likely to receive a subprime loan product.

*Legal Case Summaries***.** Most reported cases of fair housing violations in Austin and Texas were related to reasonable accommodations and disability status. These cases involved lawsuits against builders and architects to ensure buildings were properly retrofitted with amenities necessary for individuals with disabilities, as well as against public housing authorities by individuals wanting first floor apartments for increased accessibility.

*Fair Housing Complaint Process***.** Two entities within Austin are responsible for receiving fair housing complaints from residents. The City of Austin Equal Employment and Fair Housing Office are responsible for enforcing the City's fair housing ordinance and filing complaints with HUD. In 2008, 100 complaints were investigated and 15 turned into formal complaints with HUD. The Austin Tenants' Council (ATC) is a Fair Housing Initiatives Program (FHIP). ATC received 365 fair housing complaints in 2008. Most complaints received by both entities were for discrimination against disability status.

Citizen Input. Stakeholder meetings identified a strong need for a greater level of affordability in Austin's rental market. Many stakeholders felt that housing discrimination goes unreported and is tolerated by residents because of their hesitancy to leave their current situation due to a lack of affordable and accessible rental units in Austin.

The citizen survey revealed that 13 percent of respondents to the telephone survey and 17 percent of online survey respondents said they had experienced discrimination in trying to find housing. When asked why they were discriminated against, 33 percent of telephone respondents and 24 percent of online respondents felt that it was because of their race. Approximately one-third of both telephone and online respondents said they were rely on the internet when seeking help on fair housing issues.

*Housing Affordability***.** Austin is seen as a relatively expensive housing market, particularly when compared to other Texas communities. Approximately 35 percent of current renters could afford the average priced unit in Austin ($843). As such, a very large rental gap exists for Austin's households earning less than $20,000 per year. Although not all of these renters are homeless, they are most likely paying more than 30 percent of their monthly income to rent.

City Policies. A series of stakeholder meetings conducted during the completing of the Housing Market Study identified a number of concerns local affordable housing developers, advocates and policymakers had with developing housing in Austin. Overall, stakeholders felt the development process was difficult and lengthy due to a process that was not streamlined, lofty site development costs, inconsistent citywide zoning, and a large number of ordinances passed within the last 2 years. Additionally, many felt that the lack of a city-wide vision for growth allowed inconsistent neighborhood plans to take precedent in development decisions.

Impediments

The following impediments to fair housing choice were identified through this research:

Lack of action by residents experiencing discrimination

A discrepancy exists between the number of surveyed residents citing housing discrimination and the number of complaints received by the City of Austin Equal Employment and Fair Housing Office and the Austin Tenant's Council and the number of survey respondents citing discrimination in Austin. Although some respondents cited discrimination for reasons not protected under fair housing ordinances (ex: bad credit), many respondents cited race as the reason for their housing discrimination. Race was not the most common complaint received by either complaint investigation organizations.

NIMBYism

There is no strong, comprehensive guiding document for development in Austin. This has allowed neighborhood groups to play a very strong role in guiding the development process in Austin. Although neighborhood groups contribute to the unique fabric of Austin and help encourage a participatory and engaging public process, it also provides an opportunity for neighborhood groups to discourage the development of certain types of housing that are necessary to ensure housing for all of Austin's residents. This is often referred to as Not in my Backyard, or, NIMBYism. NIMBYism was mentioned as a problem in Austin by a number of stakeholders familiar with the development process in Austin.

Geographic concentration of loan denials

HMDA data suggests that residents in east Austin receive a higher proportion of loan denials than in other portions of the city. These neighborhoods also have traditionally contained higher proportions of African American and Hispanic residents. A lack of capital in these neighborhoods could result in a disinvestment in certain parts of Austin.

Policy barriers to affordable housing development

Stakeholders identified a number of policy and procedural barriers to fair housing, and, developing affordable housing in particular. The development process is made difficult in Austin by a number of city ordinances passed within the last two years, site development costs, inconsistent neighborhood zoning, a city approval process that is not streamlined and a lack of multifamily zoning.

Affordability

Stakeholders and affordable housing developers alike identified affordability as an impediment to fair housing. Affordable housing developers and others responsible for providing affordable housing stock in Austin said high land costs often make affordable housing projects economically infeasible. Additionally, many said the approval process with the city can be lengthy, which adds carrying costs to projects. As a result, stakeholders said affordable housing stock is limited for those who need it, which means that many low income individuals may be living in substandard housing or tolerating discriminatory situations, such as apartments with little to no accessibility, for fear of not finding another affordable unit.