Anti-Displacement Neighborhood Preference Policy
Disparate Impact Testing Methodology and Results
Prepared by DCD – Planning *(Updated October 2021)*

Background

The City of Milwaukee's *Anti-Displacement Plan for Neighborhoods Surrounding Downtown Milwaukee* recommended that the Department of City Development (DCD) evaluate the creation of an "Anti-Displacement Neighborhood Preference Policy." The policy was authorized by the Common Council in 2019 via Common Council File No. 190401 to provide a preference for existing neighborhood residents in newly created affordable housing units that receive City of Milwaukee financial assistance in neighborhoods exhibiting risks of displacement. Providing a limited neighborhood preference as new affordable housing units are created allows low-income residents at risk of displacement to remain in their neighborhoods and maintain their existing community based safety nets, such as access to schools, religious institutions, and community organizations.

One component of evaluating a potential preference policy was to ensure that a policy would not result in a disparate impact on any protected group under the federal Fair Housing Act. Given existing patterns of racial segregation in the Milwaukee region, a "race neutral" neighborhood preference policy still has the potential to have a disparate impact based on race or national origin. A disparate impact analysis was carried out to evaluate the preference policy to ensure it does not perpetuate existing patterns of racial segregation or limit access to newly created affordable housing units by a particular racial group.

Designing a Policy

DCD evaluated a variety of demographic data and policy options in crafting a narrowly tailored policy that would achieve the public policy goals of assisting neighborhood residents at risk of displacement, while remaining in compliance with the Fair Housing Act. Based on that analysis, the Anti-Displacement Neighborhood Preference Policy ("the Policy") designated 20% of units receiving City assistance within affordable housing developments for prioritization of residents of the zip code where the development is located. The Policy was authorized for the 53204, 53208, 53212, and 53233 zip codes which were identified by the Anti-Displacement Plan as having census tracts exhibiting potential indicators associated with elevated risk of displacement.

The included geography and percentage of designated units have both been selected to minimize the potential for the Policy to have a disparate impact based on race and national origin.

Applicable Statistical Tests

DCD carried out two distinct statistical tests to determine whether the potential Policy may have a disparate impact based on race.

- **The 4/5ths Test:** DCD evaluated the anticipated selection rates of White, Black, and Hispanic applicants for housing units within hypothetical new developments in each zip code under the potential Policy. This was done in order to evaluate whether the anticipated selection rate for any minority group was less than 80% of the anticipated rate for the majority group within that

zip code.   An anticipated selection rate of less than 80% could suggest a potential disparate impact.

- **Standard Deviation:** DCD also carried out a standard deviation analysis. Anticipated occupancy rates by race were calculated for hypothetical new developments in each zip code both with and without a potential Neighborhood Preference Policy.   This was done in order to evaluate the anticipated potential variance in racial composition of a housing development that may be caused by the implementation of a preference policy. A preference policy that is anticipated to result in a racial composition within a development with a variance of two or more standard deviations from the anticipated racial composition of that development in absence of a preference policy could suggest a potential disparate impact.

Rationale for Selected Tests

DCD relied primarily on three sources in selecting the tests and thresholds described above.

- [Title VI Legal Manual: Section VII: Proving Discrimination – Disparate Impact](U.S. Department of Justice) summarizes the standards adopted by multiple federal agencies and courts in evaluating disparate impact under federal Civil Rights laws. Both the 4/5ths Test and the Standard Deviation tests described above are cited in this document as the tests used to evaluate the potential for disparate impact in cases under a variety of federal Civil Rights laws (see Section C.1.c.iv., Determining the Significance of the Disparity):

    o *"In employment discrimination cases, where the members of one race or other protected class are selected at four-fifths (or less) the rate of another (80% or less), the EEOC, DOJ, and the Department of Labor have adopted this formula for use in identifying evidence of disparate impact. Some courts have adopted this four-fifths cutoff as a rule of thumb when determining whether the amount of differential impact is sufficient."*

    o *"Courts have considered statistical significance—the difference between the expected and observed rates in terms of standard deviations—with a difference of two or three standard deviations to be statistically significant (Hazelwood test).*"

- "[Proving Disparate Impact in Fair Housing Cases After Inclusive Communities](Schwemm & Bradford, 2016) summarizes the case law and framework for evaluating disparate impact under the Fair Housing Act. The legal precedent and guidance for using the 4/5ths Test and Standard Deviation testing are both described in this law review document.

- Discussions with the San Francisco Mayor's Office of Housing and Community Development regarding [San Francisco's Neighborhood Resident Housing Preference](. Program staff described the statistical tests that were utilized prior to finalizing their current program and provided sample testing models.

Results

The narrowly tailored Anti-Displacement Neighborhood Preference Policy passed (i.e. does not demonstrate a disparate impact based on race) both the 4/5ths and Standard Deviation tests for the proposed zip codes based on data analyzed at the time of the creation of the Policy. Zip codes where statistical testing suggested that applying the proposed Policy may potentially result in a disparate impact based on race or national origin were not proposed for inclusion under the Policy. File No. 190401 initially authorized the Policy on a pilot basis through December 31, 2021 and directed DCD to report to the Common Council prior to the expiration of the pilot period regarding the effectiveness of the Preference Policy and to provide a recommendation as to whether the Preference Policy be continued and/or the terms and regulations of the Preference Policy should be modified.

During 2021, DCD carried out an updated disparate impact analysis utilizing current neighborhood demographic data from the US Census Bureau. The results of that testing is below, and the Policy continues to pass the required tests demonstrating no disparate impact based on race/national origin.

Four-Fifth Test Analysis			
Evaluates whether the anticipated selection rate for any minority group is less than 80% of the anticipated rate for the majority group within that zip code *A selection rate less than four-fifths (80%) the rate of the majority group may be regarded as evidence of disparate impact.*			
Number of rates below 80%			0
% of rates below 80%			0%
ZIP Code	**White**	**Black**	**Hispanic**
53212	90%	Majority	88%
53204	82%	85%	Majority
53208	87%	Majority	87%
53233	96%	Majority	90%

Standard Deviation Analysis (Z-Test)			
Evaluates the anticipated potential variance in the racial composition of a housing development that may be caused by the implementation of a preference program *Results greater than two standard deviations indicate a possible disparate impact.*			
Number of deviations greater than 2			0
% of deviations greater than 2			0%
Zip Code	**White**	**Black**	**Hispanic**
53212	-0.71	0.71	-0.34
53204	-1.18	-0.95	1.70
53208	-0.95	0.71	-0.34
53233	-0.24	0.24	-0.34