

**BEFORE THE  
UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Historic Neighborhood Alliance,

Martineztown Work Group,

and

Loretta Naranjo Lopez

Complainants,

v.

City of Albuquerque

Respondent.

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## I. Introduction

The neighborhood of Martineztown in Albuquerque, New Mexico, has suffered disproportionate detrimental impacts from the long-standing history and pattern of discrimination by the City of Albuquerque's ("City") zoning, and the City's failure to correct the problem even in the most recently-adopted new code. The City's failures disproportionately impact this predominately minority community compared to similarly situated nearby communities that are more white and affluent. This disparate impact violates the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 25 U.S.C. § 1321(a) *et seq.* and the United States Department of Housing and Urban Development ("HUD") implementing regulations, and we respectfully request that the Secretary, under 42 U.S.C. § 3610, immediately refer the matter to the Attorney General for action under 42 U.S.C. § 3614 because it involves the legality of the City's local zoning laws.

From the City's zoning of Martineztown<sup>1</sup> in the 1950s to the most recent zoning plan, embodied in the Albuquerque & Bernalillo County Comprehensive Plan ("Comprehensive Plan"), updated April 12, 2017, and associated Integrated Development Ordinance ("IDO"), effective May 17, 2018,<sup>2</sup> the City has for over four decades repeatedly implemented deleterious zoning directly causing the erosion of the community's social fabric and historic character. Martineztown's population is 71% minority, while nearby historic neighborhoods Nob Hill and the Huning Highland Historic District--that enjoy much better zoning and historic protections--are 28% and 49% minority. Even if facially neutral, the City's actions are disproportionately

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<sup>1</sup> Martineztown-Santa Barbara is also known as Santa Barbara-Martineztown, Martineztown/Santa Barbara, Martineztown, Martineztown Work Group, and M-SB. In this complaint, we will use the name "Martineztown."

<sup>2</sup> This complaint focuses on the Comprehensive Plan. However, Complainants intend to file an amended complaint in May--regarding both the Comprehensive Plan and the IDO--when the IDO becomes effective.

impacting this minority community. Martineztown deserves better from its City, and is entitled to better treatment under 25 U.S.C. § 1321(a).

The Comprehensive Plan is the main policy document used to establish the vision for Albuquerque's zoning, while the IDO is the regulatory document that creates the new zoning codes, directly impacting private and public property. In this most recent City initiative to update and modernize its zoning, the City could have ensured that the zoning reflects the existing residential land uses and adopted protection for the community's many historic properties. Instead, the City perpetuated the inappropriate commercial, industrial, and mixed use zoning, leaving it to individual property owners to "opt in" to correct this "mismatched" zoning on an ad-hoc basis, after the fact. Moreover, the City failed to properly outreach to affected community members and include their input in this critical planning process.

In order to demonstrate racial discrimination from disparate impacts under Title VIII of the Civil Rights Act and the HUD implementing regulations for a facially neutral policy or practice, a complainant must establish standing, timeliness, subject matter jurisdiction, and jurisdiction over the respondent.<sup>3</sup> In order for any person to have standing, he or she must be an "aggrieved person" as defined by the Fair Housing Act.<sup>4</sup> The Fair Housing Act defines an "aggrieved person" as any person who claims to have been injured, or is about to be injured, by a discriminatory housing practice.<sup>5</sup> The standing requirement is met here because the Complainants are residents of Martineztown, and the Comprehensive Plan and IDO disparately impacts the zoning of their community. The timeliness requirement is met here because this

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<sup>3</sup> United States Department of Housing and Urban Development, *Title VIII Complaint Intake Manual* (March 20, 2018, 1:10 PM), available at <https://www.hud.gov/sites/documents/80241C4FHEH.PDF>.

<sup>4</sup> *Id.* at 4-7.

<sup>5</sup> *Id.*

complaint is being filed within one year of the date of the most recent occurrence of the alleged discriminatory housing practice; the Comprehensive Plan was adopted on April 12, 2017 and this complaint is being filed on April 11, 2018.<sup>6</sup>

The subject matter jurisdiction element requires that the allegations describe unlawful discrimination.<sup>7</sup> According to HUD, a land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic.<sup>8</sup> The implementation of the Comprehensive Plan has and will continue to carry out zoning that leads to disparate impacts to the Martineztown community. Thus, subject matter jurisdiction is satisfied. Respondent jurisdiction requires that the transaction not fall under one of the following exemptions: single family houses owned by private individual owners; religious organizations; private clubs; and housing for older persons.<sup>9</sup> Respondent jurisdiction is satisfied here because the Comprehensive Plan and IDO do not fall under any of these exemptions. Finally, in order to have a claim under Title VIII, the respondent should be a recipient of federal financial assistance by HUD.<sup>10</sup> Here, the City of Albuquerque has received federal funding from HUD during the relevant time period; thus, this requirement is met. Therefore, the Complainants' petition meets all criteria, and HUD should therefore grant this petition and the relief requested.

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<sup>6</sup> *Id.* at 4-8; 2017 ABC Comp Plan, <https://abc-zone.com/2017-abc-comp-plan>.

<sup>7</sup> *Title VIII Complaint Intake Manual* at 4-9.

<sup>8</sup> U.S. HUD, Office of Fair Housing and Equal Opportunity and U.S. Department of Justice, Civil Rights Division, *Joint Statement of the Department of Housing and Urban Development and the Department of Justice*, 5 (2016), available at <https://www.justice.gov/opa/file/912366/download>.

<sup>9</sup> *See Title VIII Complaint Intake Manual*.

<sup>10</sup> *Id.* at 4-21.

## **II. The Complainants**

The Historic Neighborhood Alliance (“HNA”) is an organization created by and composed of local Albuquerque residents working together to preserve Albuquerque’s diverse culture and protect their most vulnerable neighbors and neighborhoods. HNA continues to fight for equity in economic development for poor communities in downtown Albuquerque. HNA stands with Martineztown as it has historically suffered at the hands of racist economic urban development for over a century.

The Martineztown Work Group (“MWG”) is an organization of Martineztown residents and churches, and the Santa Barbara Martineztown Neighborhood Association, working, on behalf of their neighborhood, together for justice. For over ten years, MWG has advocated for the preservation and protection of the Martineztown community, including advocating for City housing rehabilitation benefits for residents; advocating for updates to the Martineztown Sector Development Plan; serving on a City Advisory Group regarding zoning in 2007-2009; submitting petitions for residential zoning for Martineztown in the Comprehensive Plan; reaching an agreement with local businesses for a proposal for residential zoning for the community and commercial zoning for the businesses; and holding local holiday celebrations.

Loretta Naranjo Lopez is a member of the Martineztown Work Group and President of the Santa Barbara Martineztown Neighborhood Association. Ms. Naranjo Lopez is a life-long resident of Martineztown and a sixth generation descendant of the Martinez family, founders of Martineztown. Ms. Naranjo Lopez retired as a City of Albuquerque Planner in 2003; she holds a Master of Community and Regional Planning and a Bachelor of Business Administration from the University of New Mexico.

### III. The History and Impacts of the City’s Inappropriate Zoning of Martineztown

#### A. The Founding of Martineztown in the Early 1800s

Martineztown is one of Albuquerque’s oldest and most historic communities, settled around the same time the United States acquired the land from Mexico in the Mexican-American War in 1846.<sup>11</sup> The town was founded by Don Manuel Martin with his family sometime between 1830 and 1850.<sup>12</sup> They came to the area, three miles away from “Old Town,” Albuquerque, alongside a probable track of a 1,600-mile trade route linking the New World Spanish colonies, from Mexico City to Santa Fe, called the El Camino Real de Terra Adentro.<sup>13</sup> They built a house of earthen bricks near the Acequia Madre de Los Barelas.<sup>14</sup> Utilizing this source of irrigation water, they farmed the land and the settlement grew to become a lively agricultural area trading with other communities via the historic Camino Real and Camino de Lado route trails.<sup>15</sup> A parallel acequia was added to improve irrigation.<sup>16</sup> The residents established small businesses and a small plaza.<sup>17</sup> Over 160 years later, parts of the neighborhood still retain the look and feel of a traditional New Mexico village, and many families still live on properties passed down through several generations.<sup>18</sup>

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<sup>11</sup> House Memorial 53, State of New Mexico, 2016, Introduced by Javier Martinez (Attachment A); Martineztown Overview: *Neighborhood History and Historic Character*, 2 (Attachment B).

<sup>12</sup> *Id.*

<sup>13</sup> Martineztown Overview at 3; A stretch of Edith Boulevard in Martineztown follows the path of this historic route.

<sup>14</sup> *Id.*

<sup>15</sup> House Memorial 53; Martineztown Overview at 3.

<sup>16</sup> Martineztown Overview at 2.

<sup>17</sup> William A Dodge: Martineztown-Santa Barbara Historic Preservation Project Final Report, 3 (November 2016)(Attachment C)[hereinafter Dodge Report].

<sup>18</sup> Martineztown Overview at 2.

## **B. City Zoning and Planning in Martineztown**

The story of the City's treatment of this neighborhood, however, is nothing short of a tragedy. Martineztown is located on the northeast edge of downtown Albuquerque. The City started extending water and sewer lines into the neighborhood in the 1930s.<sup>19</sup> Complainant and life-long Martineztown resident Ms. Naranjo Lopez did not see paved streets in her neighborhood until she was 15 years old.<sup>20</sup> In the 1950s, the City zoned the area for commerce and light manufacturing, and the new zoning attracted manufacturing uses, open storage, and warehousing.<sup>21</sup> The new zoning "encouraged commercial and industrial development . . . causing a major impact to the area's cultural integrity."<sup>22</sup> This shift was one of the City's key missteps; instead of protecting this culturally rich, historic neighborhood, it adopted zoning policies that sparked the deterioration of what makes this neighborhood so unique.<sup>23</sup>

In 1973, the City's urban renewal program completely rebuilt the southern part of the neighborhood.<sup>24</sup> In 1976, the Barelás acequia was filled, leaving no trace of what once was the community's heart line.<sup>25</sup> The City was well aware of what was happening to this special place, and that the City's own zoning was at fault. In 1976, the City released a "Sector Development Plan" for Martineztown that describes the problem in detail:

For about the last twenty years, the residential character of Martineztown-Santa Barbara has been deteriorating. One of the things that is destroying the 'urban village' is the growth of heavy commercial and light industrial activity in the area

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<sup>19</sup> Dodge Report at 1.

<sup>20</sup> At the time, Ms. Naranjo Lopez was living at 1128 Walter Street in Martineztown, which is across the street from her current residence of 1127 Walter Street.

<sup>21</sup> Dodge Report at 13.

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

<sup>23</sup> See Martineztown Overview at 2 ("The abundance of commercial and industrial zoned land and the resulting encroachment of commercial uses into residential areas have encouraged land speculation and discouraged residential development and reinvestment.").

<sup>24</sup> Dodge Report at 14.

<sup>25</sup> *Id.*, Letter from William Dodge to Steven Moffson and Jeff Pappas (Sept. 19, 2016) (Attachment D).

such as warehousing and construction yards which are not related to the residential life of the area.<sup>26</sup>

“The cause,” the plan concludes, “is the area’s present zoning.”<sup>27</sup> “With the exception of several pockets of residential zoning, the entire area is zoned for manufacturing, heavy commercial or land uses which do not allow residential use.”<sup>28</sup> The plan recounts the history of how this zoning was established in 1953, and how there is “incongruity” between the “zoning and the present land use.”<sup>29</sup> It concludes, clearly, that “[o]ne of the major factors contributing to the deterioration of the area as a viable residential neighborhood is the inappropriate zoning established for the area in 1953.”<sup>30</sup>

The 1976 Sector Plan also identifies that “[a]nother problem is the condition and lack of street paving and public utilities in the area;” “an estimated 59 homes lack water service and about 95 lack sanitary sewer service.”<sup>31</sup> It also noted poor traffic control, poor street lighting, and an inadequate number of fire hydrants.<sup>32</sup> The plan also points out that the mean income just a few years earlier in 1970 was \$5,638 per year in Martineztown, compared to \$9,152 for the City of Albuquerque, and that the poverty rate in Martineztown was more than double than in the rest of City: 29% of Martineztown was below the poverty line, compared to 11% for all of Albuquerque.<sup>33</sup>

Instead of triggering the needed zoning changes, the Sector Plan says “[i]t is expected that the zoning pattern will increasingly resemble [the desired land use plan] in the future as zone

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<sup>26</sup> Martineztown-Santa Barbara Sector Development Plan, 4 (April 1976)(Attachment E).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 16.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*



change requests are made and acted on.”<sup>34</sup> In other words, the City hoped individual property owners--which it knew were disproportionately low income--would fix the problem themselves, requesting individual zoning changes, on an ad hoc basis. Essentially, shifting the burden exactly as it is today with the “opt in” problem under Resolution 240-17. This clearly didn’t work in the 42 years since then, yet, today, the City is hiding behind the same exact failed plan.

In addition to failing to zone Martineztown as residential, the City also failed to protect the neighborhood’s historic resources. The combination of these two failures led to the deterioration of many of the older buildings and structures, and the erection of inappropriate land uses and different modern architectural styles.

In 1978, the paperwork to establish an historic district in Martineztown was apparently drafted, as it was found by historian Mr. William Dodge in the City of Albuquerque Planning Department’s historic preservation files in 2016.<sup>35</sup> Beyond the boundaries of the historic district, it also identified six properties with “state/national significance,” as well as a plaza and a second potential historic district.<sup>36</sup> As Mr. Dodge writes in his report: “Neither of the two potential districts were ever nominated to the National Register; however, I could not find any written explanation for this decision.”<sup>37</sup>

In 1990, the Albuquerque City Council designated Martineztown a “Metropolitan Development Area,” which is given to neighborhoods determined to be “a slum area, or a blighted area, or a combination thereof.”<sup>38</sup> “[P]resence of a substantial number of deteriorated or

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<sup>34</sup> *Id.* at 16.

<sup>35</sup> Dodge Report at 2.

<sup>36</sup> *Id.* at 3.

<sup>37</sup> *Id.* at 4.

<sup>38</sup> City of Albuquerque, Council Bill No. R-498, Enactment 9-1990 (Approved Jan. 19, 1990) (Attachment F).

deteriorating buildings” and “obsolete or impractical planning” were among the reasons listed by the City for its determination.<sup>39</sup>

In 1993, a letter from the Preservation Planner for the City’s Planning Department states she made a “unilateral” decision not to proceed with the National Register registration process for the Martineztown Plaza area because “essential components of the district are gone,” and several major buildings had been demolished, particularly in the heart of the district.<sup>40</sup> The letter explains that the loss of these older buildings and the construction of a new, modern-looking office building “removed (the district’s) potential to convey ‘the processes that have been significant parts of broad patterns of local history.’<sup>41</sup> Further, the letter states that “[T]he increased number of insensitive renovations coupled with the loss of the most intact adobe [sic] significantly lessens the integrity of the residential architecture.”<sup>42</sup>

The Plaza became the site of a state government building and some of the buildings that used to house the small local businesses were demolished.<sup>43</sup> There are several new modern buildings that “give the appearance of modernity lording over the traditional vernacular architecture sitting just below.”<sup>44</sup> The City demolished old homes rather than rehabilitate them under the Nuisance Abatement Ordinance.<sup>45</sup>

Without restrictions and programs in place to ensure that new construction and remodeling of older properties retained the historic integrity of the neighborhood, changes to the

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<sup>39</sup> *Id.*

<sup>40</sup> Dodge Report at 5.

<sup>41</sup> *Id.*

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

<sup>43</sup> *Id.* at 3.

<sup>44</sup> *Id.* at 14.

<sup>45</sup> Letter from Martineztown Work Group to Karen Hudson, Chair, Environmental Planning Commission, 2 (Apr. 10, 2017)(Attachment G); City of Albuquerque, New Mexico Code of Ordinance 27-1994 § 11-1-1-2.

residential areas furthered the deterioration of Martineztown's historic character. There are newly constructed houses throughout the older sections of the neighborhood, and small clusters of about a dozen new homes situated around cul-de-sacs--rather than the narrow, straight streets traditional to this area.<sup>46</sup> As homes have been updated over the years, property owners tended to use modern materials, such as replacing original windows and enclosing porches.<sup>47</sup>

### **C. Community-led Effort for Protection as a Historic District**

The result of the City's decisions over the decades to zone this area to promote commercial and light industrial uses, and forgo the historic protections it should have received, was the slow deterioration of its historic character and the undermining of any hope to secure the needed protections in the future.

In 2016, community members met with historian William A. Dodge, Ph.D., to discuss whether the neighborhood could become protected as an historic district under the criteria established by the National Register of Historic Places ("National Register") and the New Mexico State Register of Cultural Properties ("State Register"), with the ultimate goal of seeking designation as an Historic Overlay Zone under the City's Landmarks and Urban Conservation Ordinance.<sup>48</sup> Mr. Dodge conducted an historic properties survey and consulted with the State Historic Preservation Officer and his staff at the state's Historic Preservation Division.<sup>49</sup> Unfortunately, Mr. Dodge and the State Historic Preservation Officer concluded that the neighborhood did not qualify as a National Register historic district.<sup>50</sup> Throughout the assessments by both Mr. Dodge and the State Historic Preservation Officer, this dequalification

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<sup>46</sup> Dodge Report at 14.

<sup>47</sup> *Id.* at 18.

<sup>48</sup> *Id.* at 2.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 26.

was attributed to the intrusion of commercial and industrial land uses and the deterioration of many of the local historic resources.<sup>51</sup>

According to Mr. Dodge’s report, the National Register requires buildings maintain their original design and materials, and that an historic district retain its original setting and possess a significant concentration of buildings and structures meeting the significance and integrity criteria.<sup>52</sup> The Martineztown neighborhood could have once easily satisfied all of these elements, but the City’s decades of decisions failing to protect its historic resources created significant challenges. The use of modern design and materials when upgrading older homes, incompatible design of newer construction homes, filling in the Barelás Acequia, the demolishing of original buildings, and the intrusion of commercial businesses are just some of the detrimental changes eroding the historic character of Martineztown.<sup>53</sup> The report concludes that “although the [State Historic Preservation Officer] recognized the long and important history of the Martineztown-Santa Barbara neighborhood, the existing houses, buildings, and structures did not meet the rigorous eligibility requirements necessary to be listed in the National Register as an historic district.”<sup>54</sup>

#### **IV. The Comprehensive Plan and the IDO**

The Comprehensive Plan is the main policy document for both the City of Albuquerque and Bernalillo County guiding discretionary decisions about changes to zoning and the adoption of new plans, it “describes the community’s vision for the future of the built and natural environment and provides goals, policies, and implementing actions to achieve that vision.”<sup>55</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 6.

<sup>53</sup> *Id.* at 18-21.

<sup>54</sup> *Id.* at 21.

<sup>55</sup> Albuquerque & Bernalillo County Comprehensive Plan, 1-7 (Adopted March of 2017), available at <https://abc-zone.com/2017-abc-comp-plan>.

The IDO “sets the rules (i.e. regulations) about what can develop and what requirements must be followed to help implement the Comp[rehensive] Plan’s community vision.”<sup>56</sup> The IDO contains the new zoning code.<sup>57</sup> The plan in use today was first adopted in 1975, and since has been amended nearly 200 times.<sup>58</sup> The current Comprehensive Plan was adopted by the Albuquerque City Council on March 20, 2017, signed by Mayor Richard Berry on April 7, 2017, and became effective<sup>59</sup> on April 12, 2017.<sup>60</sup> The IDO was adopted by the City Council on November 13, 2017, signed by Mayor Richard Berry on November 16, 2017, and becomes effective on May 17, 2018.<sup>61</sup>

After so many amendments, the zoning system in Albuquerque had become very complicated with 1,200 zones.<sup>62</sup> The new Comprehensive Plan and IDO converted the City to a new system, with 19 zones.<sup>63</sup> The City endeavored to convert the pre-existing zoning districts to the new 19 zones, “that matched as closely as possible the permissive uses in each zone.”<sup>64</sup> As the City website explains, “[t]he project team used existing zoning maps to identify where today’s zones are and replace them with the closest match to the proposed zones in terms of

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<sup>56</sup> Integrated Development Ordinance Frequently Asked Questions, *What is an Integrated Development Ordinance, and why did the City adopt one?* (May 27, 2018, 8:55 AM) <https://abc-zone.com/integrated-development-ordinance-frequently-asked-questions#what-is>.

<sup>57</sup> City of Albuquerque: Official Notification of Decision, 1 (May 16, 2017)(Attachment H).

<sup>58</sup> Matthew Conrad, Code Enforcement Manager: A Zoning Code Overview for the General Public, 2 (2009)(Attachment I).

<sup>59</sup> While the Comprehensive Plan is effective for properties within the City, it is not yet effective for properties only in the County, as Bernalillo County has not adopted it yet. *See* <https://www.abc-zone.com/>.

<sup>60</sup> 2017 ABC Comp Plan, <https://abc-zone.com/2017-abc-comp-plan>.

<sup>61</sup> ABQ Adopted IDO, <https://abc-zone.com/document/abq-adopted-ido>.

<sup>62</sup> City of Albuquerque: Twenty Second Council, Resolution 17-240 (Oct. 11, 2017), *available at* <https://abc-zone.com/document/ido-resolution-17-240-zone-changes>; *see also* Albuquerque & Bernalillo County Comprehensive Plan at 1-9.

<sup>63</sup> Resolution 17-240.

<sup>64</sup> *Id.*

allowable uses and intended densities/intensities.”<sup>65</sup> The City acknowledged “that there are properties with land uses that do not match existing zoning, and the initial adoption of the IDO does not correct this mismatch.”<sup>66</sup> Much of Martineztown is in this exact situation; the pre-existing zoning mismatched with the existing land use, and the new Comprehensive Plan and IDO are perpetuating the mismatch.

When it adopted the IDO in November, 2017, the City Council also adopted Resolution 240-17, directing the Planning Department to create a process for property owners to “opt in” to request the City change the zoning for their particular property.<sup>67</sup> Most relevant to Martineztown, one of the reasons identified for opting in is to “address existing uses made nonconforming by the IDO or mismatches of land use and zoning that pre-existed the IDO.”<sup>68</sup> A property owner can “opt in” by filling out a form on a City website, at no cost.<sup>69</sup> The time frame to opt in is within one year of May 17, 2018, when the IDO becomes effective.<sup>70</sup>

Just like the approach back in 1976 as indicated by the Sector Development Plan, the City is still shifting the burden of fixing the “mismatched” zoning to individual property owners.

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<sup>65</sup> Integrated Development Ordinance Frequently Asked Questions, *What is an Integrated Development Ordinance, and why did the City adopt one?* (May 27, 2018, 8:55 AM) <https://abc-zone.com/integrated-development-ordinance-frequently-asked-questions#what-is> (noting also: “The Integrated Development Ordinance (IDO) will replace the City’s 40-year old Zoning Code and adopted Sector Development Plans and convert existing zones to an equivalent set of zones with roughly the same set of permissive uses.”).

<sup>66</sup> *Id.*

<sup>67</sup> Albuquerque, New Mexico Integrated Development Ordinance (Adopted November 29, 2017), available at <https://abc-zone.com/document/abq-adopted-ido#Draft>; Resolution 17-240.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> As of the date of this filing, the time frame to “opt in” has not yet begun. There will also be a “Community Planning Area” assessment process, to commence within two years of the IDO becoming effective, for specific areas that the Planning staff identifies mismatches between land use and zoning, and where it would be beneficial to change the zone for contiguous properties with multiple property owners. Albuquerque & Bernalillo County Comprehensive Plan at 4-23. This process, of course, provides no guarantee of a remedy for Martineztown.

Instead of adopting the appropriate zoning for Martineztown, the City is yet again perpetuating its admittedly incorrect and--worse still--harmful zoning for this disadvantaged community.

Both the Comprehensive Plan and the IDO contain hopeful language calling for the preservation of communities and historic properties.<sup>71</sup> Yet the incorrect and harmful zoning perpetuated by the IDO and the Comprehensive Plan, the City's approach for ad hoc fixes by individual property owners, and the City's failures to adopt needed protections, achieve the exact opposite: deterioration of the character of a unique, historical residential neighborhood, disorderly and uncoordinated development, and the encouragement of incompatible land uses.

Specifically, much of the western portion of Martineztown was zoned for "industrial/wholesale/manufacturing" under the old system, and is being zoned as "Non-Residential - Light Manufacturing" under the new system.<sup>72</sup> Land uses allowed under this zone include light manufacturing, freight terminal or dispatch center, railroad yard, transit facility,

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<sup>71</sup> The first of the "guiding principles" identified in the Comprehensive Plan is "Strong Neighborhoods: New development creates desirable places to live and encourages diverse housing and amenities, while respecting the unique history and character of each neighborhood." Albuquerque & Bernalillo County Comprehensive Plan at 3-8. It further elaborates: "Development in established neighborhoods matches existing character . . . . Established neighborhoods are protected, preserved, and enhanced;" "Preserving . . . historical . . . and cultural assets reinforces our shared heritage and multi-layered identities that contribute to our rich sense of place." *Id.* at 4-3; 11-3. Goal 11.2 and Policy 11.2.2 utilize similarly hopeful language, including "Preserve and maintain historically significant buildings and spaces"; "Research, evaluate and protect historical and cultural properties;" "Encourage development that strengthens the identity and cohesiveness of the surrounding community and enhances distinct historical and cultural features." *Id.* at 11-25 & 11-26. The stated purpose of the IDO includes "to [p]rotect quality and character of residential neighborhoods"; "[p]rovide for orderly and coordinated development patterns"; and "[p]rovide reasonable protection from possible nuisances and hazards and to otherwise protect and improve public health." City of Albuquerque: Official Notification of Decision, 2 (May 16, 2017).

<sup>72</sup> Integrated Development Ordinance Conversion Map (Apr. 7, 2018, 12:44 PM) <https://abc-zone.com/ido-zoning-conversion-map> (shown in light purple under the old scheme, a medium purple under the new scheme); Albuquerque, New Mexico Integrated Development Ordinance at 43.

warehousing, salvage yard, and above-ground storage of fuels.<sup>73</sup> This is directly adjacent to or within half a block of numerous historic Martineztown homes.<sup>74</sup>

Further, the area between Broadway and Edith Boulevards to the west and east, and Mountain Road and Lomas Boulevard to the north and south, is predominantly single-family homes, many of which are historic homes, but it is currently zoned for “Non-Residential - Light Manufacturing,” “Mixed-Use - Low Intensity Zone District,” or “Mixed-Use - Moderate Intensity Zone District.”<sup>75</sup>

Moreover, the City failed to protect this special neighborhood with an “Historic Protection Overlay Zone,” and instead used the more minimal “Character Protection Overlay Zone.”<sup>76</sup> Historic Protection Overlay Zones “preserve, protect, enhance, perpetuate, and promote the use of structures and areas of historical, cultural, architectural . . . significance located in the city . . . to enhance the identity of the city by protecting the city’s heritage and prohibiting the unnecessary destruction or defacement of its cultural assets.”<sup>77</sup> In these zones, the Landmark Commission must give permission before any new structures are constructed, existing structures are demolished, or the exterior appearance of any structure is altered.<sup>78</sup> This is exactly the kind of protection Martineztown seeks and deserves, and that would have prevented so much of the

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<sup>73</sup> Albuquerque, New Mexico Integrated Development Ordinance at 115-16.

<sup>74</sup> See Map Showing Location of Some of the Historic Homes and other Buildings in Martineztown (Attachment U).

<sup>75</sup> See Map Showing Location of Some of the Historic Homes and other Buildings in Martineztown; Integrated Development Ordinance Conversion Map (Apr. 7, 2018, 12:44 PM) <https://abc-zone.com/ido-zoning-conversion-map>.

<sup>76</sup> Albuquerque, New Mexico Integrated Development Ordinance at 57, 82; Integrated Development Ordinance Public Interactive Map (Apr. 7, 2018, 12:50 PM) <http://cabq.maps.arcgis.com/apps/webappviewer/index.html?id=53bf716981b14d25a31e7a2549c2d61b> (Use Overlay Zone Layer 3 to see the location of the Character Protection and Historic Protection Overlay zones).

<sup>77</sup> Albuquerque, New Mexico Integrated Development Ordinance at 97.

<sup>78</sup> *Id.*



devastating loss that has already occurred and can prevent it from continuing in the future.

Instead, the City granted only a Character Protection Overlay Zone, which “is to preserve areas with distinctive characteristics that are worthy of conservation but are not historical or may lack sufficient significance to qualify as Historic Protection Overlay (HPO) zones.”<sup>79</sup> Construction, demolition, and alterations can be done without any permission from the Landmark Commission, and the City merely provides minimal standards for characteristics such as lot width for multi-family dwellings and building height for the mixed use areas.<sup>80</sup>

#### **V. Failure to Provide Proper Notice to Martineztown Residents Precluded Proper Public Participation**

Compounding the problem, the City failed to provide proper notice to Martineztown property owners. New Mexico statute dictates that “[w]henver a change in zoning is proposed for an area of more than one block, notice of the public hearing shall be mailed by first class mail to the owners . . . of lots or [of] land within the area proposed to be changed by a zoning regulation and within one hundred feet, excluding public right-of-way, of the area proposed to be changed by zoning regulation.”<sup>81</sup> Although the City replaced the old zoning with its “closest match” under the new scheme, changes were nevertheless made across the entire City, including in Martineztown. The City therefore was obligated to notify its residents through certified mail. Unfortunately, it failed to do so. Martineztown residents, including Complainants, did not receive notice in the mail.

The result of this omission and violation of state law is that countless residents were excluded from participating in the public process to provide input on the new zoning scheme. In Martineztown in particular, 71% of the community is low-income and many do not have

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<sup>79</sup> *Id.* at 64.

<sup>80</sup> *Id.* at 82-83.

<sup>81</sup> New Mexico Statute § 3-21-6 (1996 through 1st Sess 50th Legis).

personal access to the internet and are reliant on mail for this kind of information. The City's own data shows that the participation of minorities in the development and vision process for the Comprehensive Plan and IDO was well below fair representation in terms of population.<sup>82</sup> From 1,115 polled attendees at the planning meetings, 79% of respondents were white, non-Hispanics, while only 15% of respondents were Hispanic, Latino or Chicano.<sup>83</sup> Further, on May 20th and 21st of 2015, the City's planning department held two county-wide meetings at Los Griegos Community Center and Hiland Theater, respectively.<sup>84</sup> At Los Griegos, of the 39 polled attendees, close to 60% were white, non-Hispanics, and only 25% were Hispanic, Latino, or Chicano.<sup>85</sup> Neither Native Americans (0%) nor African Americans (0%) were represented at these meetings.<sup>86</sup> At the Hiland Theater meeting, of the 58 polled attendees, 82% were white, non-Hispanic and only 11% were Hispanic, Latino, or Chicano.<sup>87</sup> Only 2% were Native American, and no African Americans were represented at the meeting.<sup>88</sup> Finally, the draft documents for the Comprehensive Plan and the IDO were written in English only.<sup>89</sup> It is clear from this data that the City did not successfully obtain the input from members of the public representative of the demographics of the City as a whole, or Martineztown in particular.

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<sup>82</sup> Letter from Martineztown Work Group to Isaac Benton, President, Albuquerque City Council, 1 (March 20, 2017)(Attachment J).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 2; *see Lau v. Nichols*, 414 U.S. 563 (1974)(finding national origin discrimination without reliance on statistical evidence because instructions took place only in English).

## **VI. Martineztown Suffers Disproportionately Compared to Similarly Situated Neighborhoods with Lower Percentages of Minority Residents**

The City's treatment of Martineztown is all the more heartbreaking when viewed in comparison to its treatment of other parts of Albuquerque. There are two areas in particular--the Huning Highland Historic District and Nob Hill--that are similarly situated to Martineztown in that they feature historically rich properties and are very nearby, yet have enjoyed more protections and more appropriate zoning. They also have significantly lower percentage percentages of minority residents, and are more affluent. Comparing these neighborhoods reveals how disproportionately Martineztown has suffered, constituting a disparate impact.

Martineztown has a population that is 71% minority.<sup>90</sup> Although not an element needed to show a violation of the Civil Rights Act, it is notable that Martineztown is also 71% low-income, and is in the 93rd percentile for the entire United States for the percentage of its population that is low-income.<sup>91</sup>

Nearly immediately south of Martineztown is the neighborhood known as the Huning Highland Historic District.<sup>92</sup> Huning enjoys an Historic Protection Overlay, in addition to some areas also receiving a Character Protection Overlay.<sup>93</sup> In contrast to Martineztown's 71%

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<sup>90</sup> Map of Martineztown-Santa Barbara Minority Population on EJSCREEN (Attachment K) "Minority" is defined herein utilizing the definition from EPA EJ Screen: "all but non-hispanic white alone"; "Calculated from the Census Bureau's American Community Survey 2011-2015." EJSCREEN: Environmental Justice Screening and Mapping Tool: *Glossary of EJSCREEN Terms* (Apr. 7, 2018 12:59 PM) <https://www.epa.gov/ejscreen/glossary-ejscreen-terms>.

<sup>91</sup> Map of Martineztown-Santa Barbara Low Income Population on EJScreen (Attachment L) "Low-income" is defined herein utilizing the definition from EPA EJSCREEN: "percent of individuals whose ratio of household income to poverty level in the past 12 months was less than 2"; "Calculated from the Census Bureau's American Community Survey 2011-2015." EJSCREEN: Environmental Justice Screening and Mapping Tool: *Glossary of EJSCREEN Terms*.

<sup>92</sup> Map of Huning Highland Historic District Boundaries on EJScreen (Attachment M).

<sup>93</sup> Integrated Development Ordinance Conversion Map (Apr. 7, 2018, 12:44 PM) <https://abc-zone.com/ido-zoning-conversion-map>; Albuquerque, New Mexico Integrated Development Ordinance at 57, 100.

minority population, the population of Huning is 49% minority.<sup>94</sup> And in contrast to Martineztown's 71% low-income rate, Huning's is 47%.<sup>95</sup> Much of Huning is zoned as "Residential Single-Family Detached," with some "Residential Multifamily - Low Density," surrounded by "Mixed Use - Low Density," which creates a buffer between the residential neighborhoods and the "Downtown Districts" and a relatively small area of "Non-Residential - Light Manufacturing."<sup>96</sup> In other words, it is mostly residential--most of which are single family homes--with some mixed use areas, and a small industrial area; and the residential uses are not adjacent to the industrial uses.

Nob Hill, which is a little east of Huning, provides a more dramatic comparison.<sup>97</sup> Nob Hill is only 28% minority, and only 29% low income.<sup>98</sup> Most of Nob Hill is zoned as "Residential Single-Family Detached," with a buffer of "Mixed Use - Moderate Intensity" and "Mixed Use - Transition" along the main road.<sup>99</sup>

## **VII. The City's Failure to Address Community Concerns**

For over a decade, HNA and the MWG have sought remedies for the disparate impacts created by the Comprehensive Plan, IDO, and history of discrimination. Their tireless efforts include submitting preferred zoning alternatives, seeking listing on the state and federal historical registers, creating a Health Impact Assessment Interim Report ("HIA") for the Comprehensive Plan, seeking updates to the Sector Development Plan, advocating before City

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<sup>94</sup> Map of Huning Highland Historic District Minority Population on EJSCREEN (Attachment N).

<sup>95</sup> *Id.*; Map of Martineztown-Santa Barbara Minority Population on EJSCREEN (Attachment K).

<sup>96</sup> Integrated Development Ordinance Conversion Map (Apr. 7, 2018, 12:44 PM) <https://abc-zone.com/ido-zoning-conversion-map>.

<sup>97</sup> Map of Nob Hill Boundaries on EJSCREEN (Attachment O).

<sup>98</sup> Map of Nob Hill Low Income Population on EJScreen (Attachment P); Map of Nob Hill Minority Population on EJScreen (Attachment Q).

<sup>99</sup> Integrated Development Ordinance Conversion Map (Apr. 7, 2018, 12:44 PM) <https://abc-zone.com/ido-zoning-conversion-map>.

officials and staff, collecting and submitting over 200 petitions, being very involved and giving their input in the review and planning process of both the Comprehensive Plan and the IDO, and filing an appeal of the IDO.

#### **A. City Advisory Committee**

In December, 2006, MWG sent a letter to the Planning Director requesting that the sector plan for Martineztown be reviewed and updated; sector plans are supposed to be updated every ten years but at that point the most recent plan was 16 years old. The letter requested that the zoning be changed to reflect the actual land use, and that the zones for heavy commercial and manufacturing uses be eliminated.

In response to the letter, the City met with the residents in 2007 and established an Advisory Committee that included residents, business representatives, and community activists.<sup>100</sup> The committee met monthly for over a year, and reached agreement on the following: keeping the character of the neighborhood as that featuring residential areas being zoned as “R-1”, low-density residential areas, and a family and child-friendly environment, respectful of the historic buildings, narrow streets, and architecture.<sup>101</sup> Unfortunately the City never adopted the Committee’s plan.

#### **B. Zoning Alternatives for Martineztown**

In 2009, MWG submitted a zoning alternative created by Sites Southwest to the Commission, Council, and Mayor.<sup>102</sup> Sites Southwest is a consulting company with a team of landscape architects, community planners, urban designers and environmental specialists who

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<sup>100</sup> Martineztown-Santa Barbara Sector Development Plan: Draft, 3 (Feb. 2013), *available at* [https://www.cabq.gov/planning/documents/copy2\\_of\\_SBMTZ2010SDP020113.pdf](https://www.cabq.gov/planning/documents/copy2_of_SBMTZ2010SDP020113.pdf).

<sup>101</sup> *Id.* at 4-5.

<sup>102</sup> Letter from Martineztown Work Group to Karen Hudson, Chair, Environmental Planning Commission (Apr.10, 2017)(Attachment G); Sites Southwest Map of Martineztown-Santa Barbara Sector Development Plan: Draft (Attachment R).

collaborate to create functional sites across the Southwest.<sup>103</sup> Sites Southwest proposed residential zoning in historical residential areas in Martineztown, eliminating the commercial zoning established by the Comprehensive Plan.<sup>104</sup> Despite MWG's request, the City did not adopt their proposed alternative.

Several years after the 2009 Sites Southwest zoning alternative, City Project Manager Lorena Quintana submitted another zoning alternative to the Commission and Council which offered similar zoning designations to that in Sites Southwest's.<sup>105</sup> In her 2013 alternative, Ms. Quintana proposed that the existing land use of Martineztown correlate to the zoning designations. Specifically, Ms. Quintana focused on the areas where the existing land use was completely residential but designated commercial and industrial/manufacturing.<sup>106</sup> Again, the City did not adopt the proposed alternative.

### **C. Health Impact Assessment**

Following the submission of the 2009 and 2013 zoning proposals, MWG commissioned Bernalillo County Place Matters ("BCPM") and members of the Health Impact Assessment Steering Committee ("HASC") to prepare an HIA, assessing the impact of the Comprehensive Plan on the City's low-income, minority urban areas.<sup>107</sup> BCPM and their stakeholders have vast expertise in land-use, natural resources economics, policy, and public health.<sup>108</sup> In their report, BCPM and HASC dissected the association between historical neighborhoods and health and the

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<sup>103</sup> Sites Southwest, *Sites Southwest About* (March 13, 2018, 2:20 PM), <http://www.sites-sw.com/about/>.

<sup>104</sup> Sites Southwest Map of Martineztown-Santa Barbara Sector Development Plan: Draft (Attachment R).

<sup>105</sup> Map of Martineztown-Santa Barbara Proposed Zoning (Jan. 2013)(Attachment S).

<sup>106</sup> *Id.*

<sup>107</sup> Bernalillo County Place Matters: Interim Health Impact Assessment Report on the Albuquerque-Bernalillo County Comprehensive Plan Update, 1 (July 30, 2015)(Attachment T).

<sup>108</sup> *Id.* at 39.

detrimental mental and physical health effects of the City's zoning on low-income urban areas.<sup>109</sup> BCPM determined that the Comprehensive Plan disparately impacts the health of residents in low-income, historical neighborhoods, in part, due to the approval of inappropriate zoning laws and gentrification.<sup>110</sup> In short, BCPM concluded that the Comprehensive Plan leads to an increase in mental health issues and stress-related disease rates in historical, minority urban areas due to a loss of cultural significance and residential displacement.<sup>111</sup> BCPM recommended, among other remedies, that the City make every effort possible to maintain the unique identity of historical neighborhoods while preventing displacement by implementing rent control for housing in neighborhoods that were at risk for displacement.<sup>112</sup> BCPM also recommended that the City promote neighborhood-scale economic development in the historical neighborhoods by ensuring that such neighborhoods had equitable access to environmental protection and were not disproportionately burdened by polluting facilities.<sup>113</sup>

#### **D. Participating in the Planning Process**

Complainants repeatedly raised concerns about the Comprehensive Plan and requested involvement in the IDO planning process. MWG sent letters to the Commission, Mayor, and City Council on January 17, 2017; March 3, 2017; April 3, 2017; and April 10, 2017.<sup>114</sup> Their recommendations included but were not limited to: (1) that the previous Sector Plans remain in effect until the completion of Community Planning Assessments through a meaningful, neighborhood-based process representing diverse stakeholders; (2) working in partnership with

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<sup>109</sup> *Id.* at 23, 32.

<sup>110</sup> *Id.* at 33.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 35.

<sup>113</sup> *Id.* at 36.

<sup>114</sup> *See, e.g.*, Letter from Martineztown Work Group to Karen Hudson, Chair, Environmental Planning Commission (Apr. 10, 2017)(Attachment G).

the Racial Equity Project; (3) sending notifications through the County Assessor mailing regarding property values and taxes, in addition to electric or gas bills; (4) publishing drafts of the proposed Comprehensive Plan and IDO in Spanish as equitably as possible, and (5) identifying and working with planning experts from minority, low-income neighborhoods who know the unique history, culture, and traditions of planning and development for each neighborhood. MWG even submitted 230 petitions supporting residential zoning in the areas of Martineztown that are actually residential. Despite many attempts to enact change and a request to be on the City Sector Review Team, MWG's requests were not included in the planning and implementation of the Comprehensive Plan and IDO.

#### **E. Appealing the IDO**

Complainant HNA filed an appeal of the IDO.<sup>115</sup> Complainant Ms. Naranjo Lopez, on behalf of the Santa Barbara-Martineztown Neighborhood Association, also filed an appeal of the IDO and requested that the City adopt an Updated Sector Development Plan and zoning map developed with Sites Southwest before the City moves forward with the new zoning scheme under the Comprehensive Plan and IDO.<sup>116</sup> The appeal also requested that all commercial businesses in Martineztown be brought into compliance with the existing zoning code.<sup>117</sup> The appeals were “not accepted.”<sup>118</sup>

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<sup>115</sup> Letter from Historic Neighborhoods Alliance to Albuquerque City Council (May 31, 2017)(Appealing the IDO)(Attachment U).

<sup>116</sup> Letter from Loretta Naranjo Lopez to Isaac Benton, President, City Council (June 14, 2017)(Attachment V).

<sup>117</sup> *Id.*

<sup>118</sup> City of Albuquerque, City Council Agenda, (1)(i) & (j) (May 1, 2017)(“Appeal not accepted; remand to the [Environmental Planning Commission]”)(Attachment W).



## **VIII. The City’s Failures Constitute a Violation of Title VIII of the Civil Rights Act**

Title VIII of the Civil Rights Act prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin.<sup>119</sup> The Fair Housing Act prohibits a broader range of housing practices than HUD’s Title VI policies, including discriminatory zoning practices.<sup>120</sup>

In order to demonstrate racial discrimination from disparate impacts under Title VIII of the Civil Rights Act and the HUD implementing regulations for a facially neutral policy or practice, a complainant must establish (1) standing, (2) timeliness, (3) jurisdiction over the subject matter, and (4) jurisdiction over the respondent.<sup>121</sup>

### **A. Complainants Have Standing to Bring this Complaint**

In order for any person to have standing, he or she must be an “aggrieved person” as defined by the Fair Housing Act.<sup>122</sup> The Fair Housing Act defines an “aggrieved person” as any person who claims to have been injured, or is about to be injured, by a discriminatory housing practice.<sup>123</sup> Given that Complainants are residents of Martineztown and the City’s zoning and history of mistreatment disparately impacts the zoning of their community, the element of standing is met. Complainant Loretta Naranjo Lopez is a member of the Martineztown Work Group, President of the Santa Barbara Martineztown Neighborhood Association, a life-long resident of Martineztown, and a sixth generation descendant of the Martinez family, founders of Martineztown. Ms. Naranjo Lopez resides at 1127 Walter Street NE, a single-family home zoned

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<sup>119</sup> 25 U.S.C. § 1321(a) *et seq.*

<sup>120</sup> *See id.*

<sup>121</sup> United States Department of Housing and Urban Development, *Title VIII Complaint Intake Manual*, 4-5 (March 20, 2018, 1:10 PM)

<https://www.hud.gov/sites/documents/80241C4FHEH.PDF>.

<sup>122</sup> *Id.* at 4-7.

<sup>123</sup> *Id.*

as Neighborhood/Residential/Commercial (“SU2-NRC”), which is being changed to “Mixed Use - Low Intensity” under the new scheme; she has advocated for many years to correct this mismatched zoning to “Residential Single-Family Detached,” R-1.

The Historic Neighborhood Alliance (“HNA”) and the Martineztown Work Group (“MWG”) are both organizations made up of Martineztown residents and have worked for decades to secure protections and better zoning for their community.

### **B. This Complaint is Timely**

For a Title VIII complaint to be timely, it must be filed within one year of the date of the most recent occurrence of the alleged discriminatory housing practice.<sup>124</sup> The most recent occurrence of the alleged discriminatory housing practice challenged herein is the adoption of the Comprehensive Plan and IDO. The Comprehensive Plan became effective on April 12, 2017, and the IDO becomes effective on May 17, 2018. This Complaint is being filed within one year of the Comprehensive Plan becoming effective: April 11, 2018.<sup>125</sup> This Complaint is therefore timely.

### **C. U.S. HUD has Subject Matter Jurisdiction over this Complaint**

The subject matter jurisdiction element requires that the allegations describe unlawful discrimination.<sup>126</sup> According to U.S. HUD, a land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic.<sup>127</sup> For example, subject matter jurisdiction was found in *Village of*

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<sup>124</sup> *Id.* at 4-8.

<sup>125</sup> Complainants intend to file an amended complaint in May--regarding both the Comprehensive Plan and the IDO--when the IDO becomes effective.

<sup>126</sup> *Id.* at 4-9.

<sup>127</sup> U.S. HUD, Office of Fair Housing and Equal Opportunity and U.S. Department of Justice, Civil Rights Division, *Joint Statement of the Department of Housing and Urban Development*

*Arlington Heights v. Metropolitan Housing Development Corporation*, where a Title VIII claim was considered by the Supreme Court when a nonprofit real estate developer and the other individual plaintiffs alleged that village officials had engaged in racial discrimination in refusing to rezone land from single-family to multiple-family classification.<sup>128</sup>

**D. This Complaint is Analogous to the Supreme Court’s Ruling in *Town of Huntington, N.Y. v. Huntington Branch N.A.A.C.P.***

Violation of Title VIII was found in *Town of Huntington, N.Y. v. Huntington Branch N.A.A.C.P.*, where action was brought under the Fair Housing Act by the town’s local chapter of the NAACP against Huntington, New York after the city refused to amend a zoning ordinance, restricted to a predominantly minority section of town.<sup>129</sup> As part of Huntington’s urban renewal effort in the 1960’s, the town created a zoning classification permitting construction of multifamily housing projects; however, they restricted private construction of such housing to the town’s “urban renewal area”--the section of town where 52% of the residents were minorities.<sup>130</sup> In stark contrast, Huntington, New York was home to approximately 200,000 residents, 95% of whom were white.<sup>131</sup> In 1980, a private developer acquired an option to purchase a site in a 98% white section of town zoned for single-family residences.<sup>132</sup> The town formally rejected the developer’s request.<sup>133</sup> The town’s rationale for refusing to amend the ordinance was that the restriction of multifamily projects to the urban renewal area would encourage developers to invest in a deteriorated and need section of town; the Court held that

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*and the Department of Justice*, 5 (2016), available at <https://www.justice.gov/opa/file/912366/download>.

<sup>128</sup> 429 U.S. 252 (1977).

<sup>129</sup> 488 U.S. 15 (1988).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

this rationale was inadequate.<sup>134</sup> The Supreme Court held that there was a disparate impact after the town refused to amend the zoning ordinance.<sup>135</sup>

Like *Town of Huntington, N.Y.*, in the 1950s, the City zoned Martineztown for commerce and light manufacturing, attracting manufacturing uses, open storage, and warehousing.<sup>136</sup> For years, the City's zoning has incorrectly zoned parts of Martineztown for commercial and industrial zoning, where the actual land use is residential.<sup>137</sup> Further, 71% of the residents of Martinez are minorities, while the City is 53.3% non-Latino.<sup>138</sup> In addition, the City's rationale that such zoning will encourage development is nearly identical to *Town of Huntington, N.Y.* Here, the Comprehensive Plan perpetuates the inappropriate commercial and mixed-use zoning in a minority urban area that has traditionally hosted single-family dwellings. The implementation of the Comprehensive Plan has and will continue to carry out zoning that has lead to disparate health, welfare, and social impacts. Like in *Town of Huntington, N.Y.*, the City of Albuquerque's mistreatment of Martineztown has resulted in disparate impacts in violation of Title VIII.

#### **E. This Complaint Satisfies the Factors Considered for Facially Neutral Violation of Title VIII**

U.S. HUD considers several factors when reviewing a complaint alleging that a facially neutral policy violates Title VIII. These factors need not all be satisfied and include, but are not limited to: (1) the "impact" of the municipal practice, such as whether an ordinance

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<sup>134</sup> *Id.* at 277.

<sup>135</sup> *Id.*

<sup>136</sup> Martineztown Overview: *Neighborhood History and Historic Character*, 2.

<sup>137</sup> Bernalillo County Place Matters: Interim Health Impact Assessment Report on the Albuquerque-Bernalillo County Comprehensive Plan Update, 10 (July 30, 2015).

<sup>138</sup> Map of Martineztown-Santa Barbara Minority Population on EJSCREEN (Attachment K); United States Census Bureau: American Fact Finder, *Community Facts*, (March 20, 2018, 2:31 PM) available at

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the “historical background” of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) departures from the “normal procedural sequence,” such as whether a municipality deviated from normal application or zoning requirements; (5) “substantive departures,” such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the “legislative or administrative history,” such as any statements by members of the state or local decision-making body.<sup>139</sup> The City’s mistreatment of Martineztown satisfies these factors.

The first factor--disproportionate impact--is satisfied given that the City’s history of deleterious and mismatched zoning, failures to adopt appropriate protections, and failure to fix this ongoing problem in the City’s most recent zoning effort disproportionately impacts minority residents compared to white residents. For instance, Nob Hill, which is only 28% minority, maintains its residential zoning through the old and new zoning schemes, matching the actual land use of the neighborhood. In contrast, Martineztown, which is 71% minority, endures commercial and mixed-use zoning in opposition to the actual residential land use. As a result of the commercial and mixed-use zoning, the residents of Martineztown continue to face the destruction of their community. Thus, given the first factor’s significant weight, the City has violated Title VIII of the Civil Rights Act and the Complainant’s requests should be granted.

The history of discrimination factor is satisfied because the historic neighborhood has been inappropriately zoned for decades, as detailed above. Given the City’s blatant history of

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<sup>139</sup> *Joint Statement of the Department of Housing and Urban Development and the Department of Justice* at 4.

discrimination towards Martineztown, the second factor is met, the City is in clear violation of Title VIII of the Civil Rights Act, and the Complainant's requests should be granted.

The third factor is satisfied given that the City departed from normal notice procedures when it failed to provide proper notice to Martineztown property owners. As described above, the City was obligated to notify its residents through certified mail. Unfortunately, it failed to do so. Martineztown residents, including Complainants, did not receive notice in the mail; therefore, the City departed from the "normal procedural sequence," and the third factor is met.

Finally, the fifth and sixth factors are satisfied given the history of various City agencies ignoring zoning alternatives proposed by the community that would have preserved the special nature of the neighborhood. For example, the City ignored both Sites Southwest's and Ms. Quintana's zoning alternatives that proposed residential zoning in predominantly historical residential areas in Martineztown, eliminating the commercial zoning established by the Comprehensive Plan and IDO. Thus, given that five out of six factors have been satisfied, the City has undoubtedly violated Title VIII of the Civil Rights Act, and the Complainants' requests should be granted.

Respondent jurisdiction requires that the transaction not fall under one of the following exemptions: (1) single family houses owned by private individual owners; (2) religious organizations; (3) private clubs; and (4) housing for older persons.<sup>140</sup> Given that the Comprehensive Plan and IDO do not fall under any of the above exemptions, this element is satisfied.

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<sup>140</sup> *Title VIII Complaint Intake Manual* at 4-9, <https://www.hud.gov/sites/documents/80241C4FHEH.PDF>.

Finally, in order to have a claim under Title VIII, the respondents should be recipients of federal financial assistance by HUD.<sup>141</sup> Here, the City of Albuquerque has received federal funding from HUD during the relevant time period; thus, this requirement is met. Therefore, the Complainants' petition meets all criteria, and HUD should therefore grant their petition and the relief requested.

### **IX. The City of Albuquerque Receives Federal Funding**

HUD's regulations implementing Title VIII of the Civil Rights Act prohibit any program or activity receiving HUD assistance from discriminating on the basis of race, color, national origin, or gender.<sup>142</sup> Further, the Fair Housing Act prohibits a recipient of federal funds from creating local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act.<sup>143</sup>

The City has received and continues to receive federal assistance from HUD grants. In 2016, the City received \$7,070,051 in HUD assistance.<sup>144</sup> In 2017, the last year for which data is available, the City received \$3,333,693 in HUD assistance.<sup>145</sup> Further, as described above, the City's mistreatment of Martineztown amounts to discrimination against communities of individuals based on their race. The Complainants have therefore established that the City violated Title VIII of the Civil rights Act, and their requests for relief should be granted.

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<sup>141</sup> *Id.* at 4-21.

<sup>142</sup> 25 U.S.C. § 1321(a).

<sup>143</sup> *Joint Statement of the Department of Housing and Urban Development and the Department of Justice* at 2.

<sup>144</sup> USAspending.gov, *Advanced Search* (March 22, 2018, 9:43 AM)

<https://www.usaspending.gov/#/search/38eb7f2fb371d8ed53e2dfb3b24c9924>.

<sup>145</sup> *Id.*

## **X. RELIEF REQUESTED**

While it is impossible to completely remedy the many decades of mistreatment and deterioration, there are tangible steps the City could take to treat this neighborhood equally to other historic communities, and that would build a brighter future for Martineztown. We respectfully request that HUD work with the City of Albuquerque to implement the following requested relief:

- 1) Change the land use zoning map in Martineztown to accurately reflect actual land uses, including zoning single-family detached homes that are part of the community's historic character as Zone District R-1, and that creates a buffer between homes and industrial uses.<sup>146</sup>
- 2) Establish an Historic Overlay Zone for Martineztown that includes restrictions on new construction and retrofits to ensure they complement the existing character of Martineztown.
- 3) Establish a standing advisory committee of community residents, including Complainants, to work with the City on planning and zoning in Martineztown.
- 4) Working with the standing advisory committee, outreach to property owners of homes and other buildings that could qualify for listing under the National Register of Historic Places and the New Mexico State Register of Cultural Properties, and assist their applications for listing if the property owners so desire.
- 5) Ensure that the businesses currently located in Martineztown are in full compliance with the current zoning code.

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<sup>146</sup> See, e.g., Map of Martineztown-Santa Barbara Sector Development Plan: Draft (developed by community members and Sites Southwest in 2009 indicating the desired residential zoning)(Attachment R).



List of Attachments

Attachment A	House Memorial 53, State of New Mexico, 2016, Introduced by Javier Martinez
Attachment B	Martineztown Overview: <i>Neighborhood History and Historic Character</i>
Attachment C	William A Dodge: Martineztown-Santa Barbara Historic Preservation Project Final Report (November 2016)
Attachment D	Letter from William Dodge to Steven Moffson and Jeff Pappas (Sept.19, 2016)
Attachment E	Martineztown-Santa Barbara Sector Development Plan (April 1976)
Attachment F	City of Albuquerque, Council Bill No. R-498, Enactment 9-1990 (Approved Jan. 19, 1990)
Attachment G	Letter from Martineztown Work Group to Karen Hudson, Chair, Environmental Planning Commission (Apr.10, 2017)
Attachment H	City of Albuquerque: Official Notification of Decision (May 16, 2017)
Attachment I	Matthew Conrad, Code Enforcement Manager: A Zoning Code Overview for the General Public, 2 (2009)
Attachment J	Letter from Martineztown Work Group to Isaac Benton, President, Albuquerque City Council (March 20, 2017)
Attachment K	Map of Martineztown-Santa Barbara Minority Population on EJSCREEN
Attachment L	Map of Martineztown-Santa Barbara Low Income Population on EJScreen
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Attachment Q	Map of Nob Hill Minority Population on EJScreen
Attachment R	Map of Martineztown-Santa Barbara Sector Development Plan: Draft
Attachment S	Map of Martineztown-Santa Barbara Proposed Zoning (Jan. 2013)
Attachment T	Bernalillo County Place Matters: Interim Health Impact Assessment Report on the Albuquerque-Bernalillo County Comprehensive Plan Update (July 30, 2015)
Attachment U	Letter from Historic Neighborhoods Alliance to Albuquerque City Council (May 31, 2017)(Appealing the IDO)
Attachment V	Letter from Loretta Naranjo Lopez to Isaac Benton, President, City Council (June 14, 2017)(Appealing the IDO)
Attachment W	City of Albuquerque, City Council Agenda (May 1, 2017)
Attachment X	Map Showing Location of Some of the Historic Homes and other Buildings in Martineztown