

Public policy vs. private property: Housing fight looms in Fresno

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A new federal housing rule aims to end Fresno's long history of concentrated poverty and open wealthy neighborhoods to minorities and the impoverished.

One City Council member says the rule is full of social engineering that will harm all Fresnoans.

Fresno City Council Member Steve Brandau worries about the possible impacts of new federal rules on housing. | CRAIG KOHLRUSS Fresno Bee file photo

Housing advocates say equity demands immediate housing justice. Fresno's city manager counsels patience.

To be precise, the regulation is called the [Final Rule for Affirmatively Furthering Fair Housing](#), and comes from the [U.S. Department of Housing and Urban Development](#).

The rule is ambitious in its pursuit of long-cherished American goals — social justice, economic progress — and complex in its logic.

In a nutshell, the rule doesn't try to revive the Civil Rights battles of the mid-20th century, although it says blatant housing discrimination (you're black — go!) still exists. Rather, the rule focuses on the concentration of "opportunity assets."

In other words, geography has come to count above almost all else in the game of life. Stable, well-heeled neighborhoods, by their nature, provide advantages to residents that those living elsewhere are denied.

This betrays the American ideal, violates federal law and perpetuates stark disparities, HUD says. The rule seeks to remove barriers that stop legally protected classes, including minorities and the poor, from effortlessly moving into advantageous neighborhoods.

"As a former mayor, I know firsthand that strong communities are vital to the well-being and prosperity of families," says [HUD Secretary Julian Castro](#), former mayor of San Antonio. "Unfortunately, too many Americans find their dreams limited by where they come from, and a ZIP code should never determine a child's future."

"This important step will give local leaders the tools they need to provide all Americans with access to safe and affordable housing in communities that are rich with opportunity."

Fresno City Manager Bruce Rudd says he has talked with HUD officials, particularly about the prospect of more low-income housing in higher-income neighborhoods.

"There are obvious signals coming from the federal government that we need to start looking at putting these kinds of projects in other parts of the community," Rudd says.

None of this is new. What's new is the change this could bring to Fresno housing policy. It's a history full of intense, often angry, debate.

Do I think we're going to run into something like 'Great idea, but just not in my neighborhood?' Yes.



Fresno City Manager Bruce Rudd

City Hall for decades essentially had a colonial outlook. Growth rushed to the north after World War II. Political power went north, too. This power, ensconced in City Hall, sought to revitalize the south in its place. The new rule retains such a goal, but adds mobility. Why not bring the south into the north, even if the former hasn't first attained some sort of vaguely conceived northern ideal?

Council Member Steve Brandau, whose District 2 covers northwest Fresno, says justice and equity are dear to him, too. But, he says, the new rule looks like Big Brother using people as objects to advance centralized planning.

"This is the social engineers at work again," Brandau says. "This rule is definitely going to be transformative. It's going to transform north Fresno in the wrong direction."

Pivotal housing fight

Fresno nearly 20 years ago was torn apart by a low-income housing struggle.

Wellington Place was to be a 324-unit apartment complex on 24 acres near Herndon and Spruce avenues in northwest Fresno. The developer, a Clovis-based company, wanted to finance the project with tax-exempt bonds issued by the Housing Authority.

The process required developer Peter Herzog to get City Council approval. After a month of fighting, the council in early 1997 rejected Herzog's request on a 5-2 vote.

The sticking point was in the eye of the beholder.

Herzog said nearby homeowners hated Wellington Place because the project would include 65 units for low-income renters. He painted opponents with their worries over increased crime and sinking property values as "elitist."

Chris Mathys, northwest Fresno's council member at the time, said Wellington Place was simply bad housing policy.

"I don't believe it is fair that we subsidize as taxpayers low-income housing when we already have a high vacancy rate in Fresno," Mathys said.

The urban core also would suffer if there was a flight of inner-city renters to north Fresno, Mathys said.

Supporters and opponents each held a rally to drum up public support. The Wellington Place hearing in March 1997 was moved to the Fresno Convention Center's Saroyan Theater to handle the crowd of 600. Speakers were cheered and jeered by the audience.

An official with Central Unified School District worried about overcrowded schools. Council Members Ken Steitz and Mike Briggs (the yes votes) worried about a lawsuit. Former Council Member Les Kimber worried about the integrity of fair housing laws.

Herzog filed a \$27 million lawsuit in May 1997. The charge: City Hall's decision discriminated against minorities, children and the disabled, each a protected class under federal and state fair housing laws.

More than a dozen defendants were named at the start. In the end, it was City Hall and Mathys against Herzog and one other plaintiff.

We will use enforcement as the last resort.

HUD spokesman Ed Cabrera

A federal jury decided the council's rejection of Wellington Place did have a "disproportionate impact" on minority

renters with little money. But, the jury added, the city would have come to the same decision even if low-income minority renters weren't in the picture.

An appeals court upheld the jury verdict. The plaintiffs walked away with \$2 in damages. Mathys and City Hall walked away with vindication.

"An incredible victory," said City Attorney Hilda Cantu Montoy.

The drama took nine years to play itself out.

Autry does his best

It took another three years and the charisma of a former pro football quarterback-turned-Hollywood actor to get the justice of geography back in City Hall's spotlight.

Jim Patterson never seemed to have much time for low-income housing during his lone term (1997-2001) as a strong mayor. When he wasn't successfully battling a spirited recall effort, Patterson was losing a vicious fight with the City Council over the scale of a downtown baseball stadium.

Then came the summer of 2000 and Alan Autry.

"We continue to be a 'tale of two cities,' not a 'story of one,'" Autry said during his campaign for mayor against Dan Whitehurst.

Exactly what this meant wasn't clear until Autry took office in January 2001. What unfolded over the next eight years was ironic, indeed.

Autry frittered away political capital early in the game with bluster about reforming Fresno Unified School District. But mostly he focused on what essentially was a siege of the urban core's woes. He wouldn't take active measures to meld north and south. He would bring the south up to the north's level.

If people in the rebuilt south decided they were happy where they were, well, so be it.

Autry moved quickly to build the stadium, supposedly the catalyst for downtown's rebirth. He borrowed millions for No Neighborhood Left Behind, supercharging the construction of curbs and sidewalks in older areas. He pushed the Regional Jobs Initiative, another of those public-private collaborations designed to put people to work.

Conventional wisdom at this time, and for decades before, held that growth to the north was responsible for decay in the south. Autry issued piles of bonds to change this.

There was a catch.

Money for the bonds' annual bill was to come from a reformed system of developer fees. But to collect enough fees to pay for the growing load of debt, Fresno's developers had to build single-family homes like crazy.

This wasn't a problem during the go-go housing boom of 10 years ago. But almost all of the homes were built in the same suburbs that federal officials now see as impregnable vaults of opportunity assets not found in minority-heavy neighborhoods.

In the eyes of some critics, Autry merely poured gasoline on the fire.

As he left office in January 2009, Autry said his legacy is "building a solid foundation for the future."

Swearengin makes big plans

Four key things happened in the current era of Mayor Ashley Swearengin regarding low-income housing.

First, she asked at the start of her first term for an update of the city's growth blueprint.

The 2035 general plan got City Council approval this past December. It's part of an ambitious mayoral agenda. The archaic development code is getting a makeover. The 11 square miles that were Fresno before World War II have their own redevelopment plan. Downtown's Fulton Mall may soon be Fulton Street again. A blight-fighting task force has taken aim at slumlords.

But the general plan is Swearengin's star. The plan promises to rid Fresno of "high concentrated poverty, high unemployment and extreme disparities in quality-of-life circumstances and opportunities in different parts of the city." It's a rare mayoral speech that doesn't touch on that theme.

Second, Fresno continued to be a favorite of nonprofits with a computer and a yen for ranking cities on various misery indexes.

A workforce with superb science and math skills? Fresno's labor pool was found to be near America's bottom. A park system with enough quality green space? Fresno's is always at the bottom. The Brookings Institution in 2005 found Fresno to have the most concentrated poverty of any big city in the nation. What about suburban poverty? Brookings in 2013 said Fresno ranks No. 5 nationally.

As Swearengin once said of another abysmal Fresno ranking, the city all too often is in "a race to the bottom."

Third, Fresno Housing Authority CEO Preston Prince hit his stride. He came to town in late 2007, just as the Great Recession gathered steam. Prince was forced to bide his time, but only briefly.

The opening of Parc Grove Commons turned a lot at Fresno Street and Clinton Avenue into 215 units of affordable housing. The vacant Droge Building, downtown's scariest structure with ugly steel poles propping up its walls, was torn down and the site turned into CityView @ Van Ness, 45 housing units for renters of modest income. Half of what had been Fresno's scariest block, the stretch of Santa Clara Street in front of the Poverello House, saw the immense homeless camp disappear and the Renaissance at Santa Clara, 70 housing units for the chronically homeless, take its place.

Prince has done such stuff over and over.

City Hall's relationship with Prince has been testy at times. He often asks for financial help on projects deemed by some city officials to be too expensive.

But perhaps a bigger source of conflict is Prince's nature. He's a doer. As he said at one grand opening of a Housing Authority project, "we can lease up." That sticks in minds now that pressure builds to do something like Parc Grove, CityView and Renaissance at Santa Clara in north Fresno.

Fourth, HUD at the end of Swearengin's first term released a blistering report outlining systemic failures throughout Fresno's housing division. One result was to put City Hall squarely in the sights of HUD officials.

The two sides have tried to fix things for three years.

"I think they're beginning to iron themselves out," Rudd says.

Cut through the chatter

And now comes HUD's final rule on [Affirmatively Furthering Fair Housing](#).

It takes up 101 pages in the Federal Register. Rudd and Prince say they're still getting their arms around the rule's

meaning and what to do next.

One thing seems clear. City Hall's preferred low-income housing policy, where the effect if not intent is to segregate low-income renters or buyers in southern parts of town, is toast.

Key parts of the rule:

- It applies to entities receiving HUD money. Fresno and the Housing Authority annually receive millions from HUD.
- It builds on the [1968 Fair Housing Act](#). This prohibits discrimination on factors such as race, religion, disability or family status.
- HUD grantees (entities like City Hall and the Housing Authority) must craft a detailed analysis of what HUD calls "fair housing issues in its geographical area." These patterns include integration, segregation and racially/ethnically concentrated areas of poverty.

This is bringing social engineering to a new level. It's going to be resisted by communities across the nation.

Fresno City Council Member Lee Brand

- HUD is especially interested in the distribution of opportunity assets. There's trouble if there's no housing mobility between neighborhoods rich in education, employment, transportation and environmental health and those without.
- Land-use decisions (the essence of City Hall's mission) will go under the microscope. For example, zoning policies made without overt prejudicial intent that end up segregating minorities or the poor may not survive legal scrutiny. This concept is sometimes called disparate impact, and its authority was recently affirmed by a U.S. Supreme Court decision in a Texas housing controversy.
- HUD's reach doesn't stop at the city limits. A Fresnan or developer moving to Clovis to escape the rule's consequences is out of luck. The rule strongly encourages regional solutions.

HUD's 24-page analysis of its own rule doesn't come right out and say cities are losing political control of their destiny. Federalism isn't dead. But it does suggest cities will find that their longtime federal partner on housing issues will move to senior status if necessary.

City Halls, the analysis says, "have a statutory duty to affirmatively further fair housing."

HUD spokesman Ed Cabrera says the fair housing rule is full of "the spirit of collaboration." A city hall and HUD will work together on "where we go initially," he says.

The San Francisco-based Cabrera says his office has "enjoyed" working with Fresno City Hall on many issues.

Cabrera acknowledges that HUD is aware of much of Fresno's housing history, and is learning more all the time.

So, is Fresno No. 1 on HUD's to-do list?

Housing discrimination still exists in more nuanced forms and persists in both rental and sales markets.

HUD analysis of its final rule on Affirmatively Furthering Fair Housing

Cabrera doesn't bite. He says only that the fair housing rule "is an opportunity" for Fresno officials to do the right thing themselves. He says Fresno officials will "have all the support they need from HUD."

But, Cabrera adds, the rule has a clear goal: "Get people out of concentrated poverty." He says such a change of geography among the disadvantaged "really does work."

As to HUD's considerable enforcement powers, Cabrera says it should be enough to simply repeat that Fresno officials "will need to take into account the new rule."

Opposing sides take shape

Hold on, Fresno. Wellington Place could look like a pillow fight compared to what's next.

HUD's new fair housing rule is well-known to local housing advocates who have longed for an issue to bind their many beefs with City Hall.

Leah Simon-Weisberg, San Francisco-based legal director with renters advocacy group [Tenants Together](#), says Fresno has too many neighborhoods lacking parks, quality housing and top-notch schools.

1992

When the Fresno Police Department began providing extra police service to Housing Authority apartment properties

"Those are the same places where the majority of folks of color in Fresno live," Simon-Weisberg says. "They are not having equal access to all of those resources."

Veronica Garibay, co-director with Fresno-based nonprofit [Leadership Counsel for Justice & Accountability](#), says City Hall must provide "opportunities for individuals and families of all income levels to live in the neighborhoods where they choose to live."

But the trigger to this revolution, the proposed Wellington Place or Renaissance at Santa Clara-type project, has yet to land on the City Council's plate.

Rudd says housing funds in this fiscal year are budgeted for things like rehabilitation of owner-occupied houses and remodeling for homes owned by seniors. Discussion of new low-income apartment complexes anywhere in Fresno, let alone in the north part of town, may have to wait until next spring, he says.

Brandau and Council Member Lee Brand (who serves northeast Fresno) wonder whether Fresnans in good faith will be allowed to speak their minds when that first controversial Affirmatively Furthering Fair Housing project gets here.

For example, they point to the council's approval on July 16 of a contract to provide two sworn Fresno police officers for 13 Housing Authority-connected apartment complexes in southeast and southwest Fresno. The officers are funded with HUD money.

Chief Jerry Dyer says his department has provided extra protection to Housing Authority apartments for nearly 25 years. Housing Authority officials and their renters clearly don't want destabilizing behavior in their backyard.

Brandau and Brand ask if their constituents risk being shouted down if they simply ask for HUD-funded extra police protection at the low-income housing complexes coming to north Fresno.

It's too early to say.

Cabrera says his HUD colleagues would love to get an invitation to come to City Hall and talk things over in public.

"I think they would be ready," he says.

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