

## Determination of Eligibility

October 1, 1991

MEMORANDUM FOR: Sam R. Moseley, Regional Administrator-  
Regional Housing Commissioner, 6S

ATTENTION: R. D. Smith, Regional Director  
Community Planning and Development, 6C

FROM: nna Kondratas, Assistant Secretary for Community Planning and Development, C \S\

SUBJECT: Request for Determination of Eligibility  
Project No. B-90-MC-48-0019, Houston, Texas

This is in response to your correspondence dated April 12, 1991, on behalf of the City of Houston, Texas. The City wrote to you on April 1, 1991, requesting approval to temporarily relocate city workers to the Palm Center Development, which had earlier involved the use of CDBG funds for the acquisition and renovation of buildings for an economic development project. Your memorandum requests a determination of eligibility for this use of the building, based on an assumption that the regulation at 24 CFR 570.207(a)(1), which prohibits using CDBG funds for buildings used for the general conduct of government, can be waived.

Beginning in 1987, the City of Houston expended approximately \$7.3 million of CDBG funds to pay for acquisition, renovation and related development activities of a strip shopping center. The project was intended to provide space for offices, an incubator facility and other private sector commercial activities, but has largely remained vacant. Most of the center is currently owned by a wholly owned, non-profit subsidiary of the City, called Small Business Development Corporation.

The City of Houston proposes to lease approximately 170,000 square feet of vacant office space from Small Business Development Corporation, moving 1,200 city employees for a three-year term, starting in the first quarter of 1992. The City would pay the current asking price for rental of the facilities, including an additional increment in lease costs for build-out costs and tenant improvements to the existing space. No Federal funds would be used to subsidize the move.

Houston asserts that the move would be temporary, allowing time for the employees' existing space to undergo asbestos removal. At the same time, approximately 100 new positions would be filled, resulting in job creation for neighborhood residents. The City believes that these new jobs would allow them to meet a national objective through creation of jobs that was intended when this project was funded.

We have reviewed the information provided by the City and your office and have concluded that, although the correspondence requests a determination of eligibility for activities being conducted with CDBG funds there is not eligibility issue since no additional CDBG funds would be spent. The issue more appropriately concerns a "change of use", as described in the regulations at 24 CFR 570.505. This

provision governs real property which is within the grantee's control and was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. A use of the property for a purpose other than that for which it was acquired or improved must generally qualify as meeting one of the national objectives in 24 CFR 570.208 and not be a building for the general conduct of government.

The prohibition against allowing a changed use to include a building for the general conduct of government is based on statute, at Section 105(a)(2) of the Housing and Community Development Act of 1974, as amended. Since the law does not authorize the expenditure of CDBG funds for the acquisition or improvement of properties that will be used for the general conduct of government, neither may a property that was acquired or improved for another, eligible purpose be later converted to such use. However, it would be possible for the City to change the use of the property for the currently proposed purpose if the City were to reimburse the CDBG program in the amount of the current fair market value of the property, as required under 24 CFR 570.505(b).

Pursuant to 24 CFR 570.5, the Department may waive regulatory provisions which are not required by statute. The regulatory provision which would need to be waived in this case is required by statute. The only way the City has authority to use the buildings in the manner they are proposing is to reimburse their CDBG account by the fair market value of the property. However, I cannot conclude that the City of Houston may lease office space for City employees in the Palm Center buildings while CDBG funds are still involved.

cc: Linda Marston, SC