

## Excessive Force Provision

June 21, 1993

Honorable Patricia L. Bailey  
Vice-Mayor of Pinellas Park  
Pinellas Park, FL 34665-2498

Dear Vice-Mayor Bailey:

Thank you for your letter of May 13, 1993, to Secretary Cisneros, regarding the decision of the City of Pinellas Park not to participate in Pinellas County's Community Development Block Grant (CDBG) program during the Fiscal Year (FY) 1994-1996 urban county qualification period. According to your letter, the City has participated under the urban county's program since its inception, but has decided not to continue to participate because the inclusion of the excessive force provision in the cooperation agreement between the City and the County is not consistent with City Council policy. You ask if this is a new requirement being passed down by the Department of Housing and Urban Development (HUD); and, if so, why is it necessary to have this type of legislation included in an agreement between local units of government.

The excessive force provision was required initially by section 519 of the 1990 HUD Appropriations Act (Public Law 101-140). Under the 1990 Appropriations Act, no funds appropriated in the Act for the CDBG program could be awarded to any municipality that failed to adopt and enforce "a policy prohibiting the use of excessive force by law enforcement agencies within the jurisdiction of the municipality against any individuals engaged in nonviolent civil rights demonstrations." This provision did not amend the certifications required under Title I of the Housing and Urban Development Act of 1974, but applied only to the 1990 HUD appropriations for community development programs. HUD implemented this provision by requiring CDBG grantees to submit to HUD a certification that such a policy had been adopted and was being enforced.

Subsequently, section 906 of the National Affordable Housing Act (NAHA) of 1990 amended Title I of the Housing and Community Development Act of 1974 by adding a new certification entitled Protection of Individuals Engaging in Non-violent Civil Rights Demonstrations. The language imposed by the 1990 Appropriations Act was retained and additional language was added requiring units of government receiving CDBG funds to adopt and enforce "a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within jurisdictions." The Department interprets the law to mean that any unit of government receiving CDBG funds

must adopt and enforce such a policy. Only the County signs the grant agreement and certifications which are sent to HUD. In order for units of government participating in the urban county consortium to show compliance with the statute, the provision is incorporated into the Cooperation Agreement between the County and participating unit of government. Since the adoption and enforcement of an excessive force policy is required by statute, the Department does not have the authority to waive this requirement.

Our review of the Pinellas Park police officers directive which was enclosed with your letter finds that it meets the requirements of the excessive force provision required under the CDBG statute. The City's policy against the use of excessive force covers all situations. The Department believes that the policy required by the CDBG statute need not specifically mention individuals engaged in non-violent civil rights demonstrations if the local government's policy covers all individuals.

The information you submitted does not address the second part of the CDBG statutory provision. Your letter indicates that your Council feels it is inappropriate to make a blanket statement regarding which facilities, or locations, that may or may not be barred from use without properly assessing the situation from the position of a law enforcement officer confronted with the situation. Your concern may be misplaced. The statute only requires each local government to have a policy that it will enforce any existing State and local law against barring entrance to or exit from a facility or location which is the subject of a nonviolent civil rights demonstration. If the State or Pinellas Park has such a law, your certification means that you have a policy that you will enforce such laws. If there is no State or local law, your certification does not impose any requirement to enact such a law.

Even though Pinellas Park has made the decision not to participate for this 1994-1996 qualification period, please be reminded that the City still has the option to join Pinellas County's CDBG program during the second and third year (1995 or 1996) of the County's program. However, if it decides to do so, the adoption and enforcement of an excessive force policy would be required.

Thank you for your interest in the CDBG program.

Very sincerely yours,

(Signed David M. Cohen)

David M. Cohen  
Acting Deputy Assistant  
Secretary for Grant Programs