



Memorandum

TO: HOUSING AND COMMUNITY
DEVELOPMENT COMMISSION

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: March 1, 2018

Approved

Date

SUBJECT: TENANT SOURCE OF INCOME POLICY

RECOMMENDATION

Accept the staff report and provide the Housing Department with feedback on the policy framework related to source of income discrimination.

OUTCOME

This report explores the feasibility of creating a source of income ordinance. It summarizes how other localities have addressed their rental market's lack of acceptance of rental subsidies. It also recommends a policy and implementation framework for consideration in San José.

BACKGROUND

The federal Housing Choice Voucher program (HCV), commonly referred to as Section 8, provides rental subsidies so that low-income tenants can afford to rent privately owned apartments. The Santa Clara County Housing Authority (SCCHA) manages the City of San José Housing Authority's HCV program. Under HCV, voucher holders pay 30-32% of their gross income toward rent, and SCCHA pays a property owner the difference between the renters' payment and the SCCHA-approved market rent. The City and the County of Santa Clara also offer rental voucher subsidies to extremely low-income residents with rules similar to the HCV program.

Unfortunately, voucher holders across the U.S. are having trouble finding landlords who will accept HCVs. The issue is serious enough that over 42 jurisdictions nationwide have adopted policies or ordinances relating to this issue.¹ These major cities include San Francisco, Seattle,

¹ <https://affordablehousingonline.com/source-of-income-antidiscrimination-laws> accessed on 2/25/18.

Minneapolis, Philadelphia, and New York City. California law prohibits discrimination based on source of income. However, California courts have held that California's source of income discrimination law does not apply to HCVs or other similar rental subsidies. This has left many rental subsidies holders vulnerable to discrimination.

Many apartment owners choose not to participate in HCV and in other rental subsidy programs for a variety of reasons. A landlord's rejection of applicants possessing vouchers constitutes rejection based on applicants' source of income. In fact, many voucher holders are rejected before they apply for housing, as numerous property managers advertise that they will not accept applications from Section 8 tenants. This explicit rejection of voucher holders due to their source of income makes it even more difficult for those people to find apartments, given San José's extremely competitive rental market.

In order to address this issue, a number of jurisdictions in California, including Santa Clara County, San Francisco, Mill Valley, East Palo Alto, Corte Madera, Marin County, and Santa Monica, have adopted source of income anti-discrimination ordinances. These ordinances prohibit owners from using HCVs and other tenant-based subsidies as the grounds for rejecting or refusing an applicant.

City Council Direction

In June 2015, the City Council included a source of income ordinance in its priority setting session, and requested that staff work on this issue. On September 1, 2015, the City Council accepted staff's recommendation that work on a source of income ordinance be delayed given the City of Santa Monica's source of income ordinance was being challenged in court. On January 30, 2017, the Los Angeles County Superior Court upheld the Santa Monica law.

On April 25, 2017, the City Council adopted the HUD Analysis of Impediments (AI). This report, required by the federal government, describes the City's fair housing needs and strategies to address those needs. On page 97, the AI indicates there have been challenges in finding suitable apartments for Rental Assistance Voucher Holders. On page 22, public outreach results echo this sentiment. Finally, page 106 of the AI states that City will explore the feasibility of a source of income discrimination protection, as moved by City Council per a memorandum dated April 21, 2017. Staff has interpreted this to include the following:

- Analysis of online advertisements that bar tenants with subsidies from applying;
- Stakeholder feedback on why more vouchers are not being accepted;
- Evaluation of source of income policies and ordinances in California;
- A draft policy framework with the following objectives:
 - Ensure that all persons with the ability to pay for housing are considered for housing, regardless of whether they receive a housing subsidy or housing assistance of any kind.
 - Increase the number of voucher holders accepted into apartments.

On March 25, 2017, the Santa Clara County Board of Supervisors adopted ordinance number NS-507.1 to “ensure that all persons with the ability to pay for housing are considered for housing, regardless of whether they receive a housing subsidy or housing assistance of any kind.” The ordinance applies to unincorporated areas under the County’s jurisdiction, and prohibits landlords from:

- Rejecting, refusing to consider, terminating tenancy, conditioning, or creating different standards for renters with vouchers;
- Considering rental voucher income differently than other income in financial standards;
- Refusing or restricting facilities, services, repairs, or improvements for current or prospective renters; and,
- Advertising or communicating limitations or discrimination based on voucher possession.

The full text of this ordinance is attached as **Attachment A**.

ANALYSIS

The following analysis provides an overview on the HCV program, information on who uses these vouchers, the extent that landlords refuse to accept applications from HCV tenants, analysis of stakeholder input, and a draft policy framework.

Overview and Demographics

The San José Metro Area (which includes Santa Clara and San Benito Counties) is the second most expensive rental and homeownership market in the Country². Demand for the HCV program in Santa Clara County is extremely high. The current waitlist originated in 2006 with 50,000 applicants and now has approximately 5,100 applicants. Because of the administrative burden to maintain the list, which includes tracking the status and address of each household, the list has been mostly closed since this date. The need for housing assistance is arguably greater than ever, yet an estimated 680 HCV holders are currently searching for apartments in Santa Clara County.³ Tenants who cannot find an apartment in the required period of time (six months, with a possibility of a three months extension) face losing their voucher and possible homelessness, with no possibility of applying for new vouchers as waiting lists are closed.

By the federal program’s design, HCV encourages local housing authorities to prioritize renters who are vulnerable and in need of housing assistance. This is true for the approximately 11,796 HCV recipients are renting in San José. As compared to the average population, voucher holders in San José are more likely to have special needs, to possess disabilities, and to have experienced homelessness. Of these clients, 50% are disabled heads of household, 25% are families with a

² National Housing Conference, Paycheck to Paycheck Report for 2017; <https://www.nhc.org/publication/paycheck-to-paycheck-2017/>

³ As of February 15, 2018,

person with disabilities who is not the head of household, 24% are female heads of households, 13% are families with minor children, and 8% are formerly homeless.

HCV recipients are also more likely than San José's overall population to be people of color and to pay a high percentage of their income on housing costs. The following table compares the racial breakdown of HCV recipients in San José with that of total rental households with severe housing cost burden, and then with overall households in San José. The table shows that Asian, Latino, Black, and American Indian households are overrepresented in the pool of San José HCV holders. White and Native Hawaiian/Pacific Islander households are underrepresented in the pool of HCV holders. For severe housing cost burden, Latino, Black, American Indian/Alaska Native, and Native Hawaiian/Pacific Islander households are overrepresented while White and Asian households are underrepresented.

This data indicates that these households are disproportionately represented in the HCV population. This means that discrimination on the basis of Section 8 has a disproportionate impact on communities of color who are overrepresented in the voucher population.

Racial Composition of San José Households with Housing Choice Vouchers

| Race (based on Head of Household) | Households with HC Vouchers | % | Renter Households - Severe Housing Cost Burden⁴ | % | All Households | % |
|--|--|----------|---|----------|---------------------------|----------|
| Asian | 5,020 | 43% | 36,680 | 28% | 96,340 | 31% |
| White Hispanic or Latino | 3,234 | 27% | 46,610 | 35% | 78,100 | 25% |
| White Not Hispanic or Latino | 1,662 | 14% | 37,910 | 29% | 116,760 | 38% |
| Black | 1,649 | 14% | 6,625 | 5% | 10,345 | 3% |
| American Indian/Alaska Native | 191 | 2% | 535 | 0% | 890 | 0% |
| Native Hawaiian/ Pacific Islander | 40 | 0% | 650 | 0% | 985 | 0% |
| Other | N/A | N/A | 3,225 | 2% | 7,165 | 2% |
| Total San José Households with Vouchers | 11,796 | | 132,235 | | 310,585 | |

⁴ HUD defines 'severe cost burden' as paying more than 50% of income on housing costs.

Survey of Apartment Listing Advertisements

The Housing Department conducted its own research to assess the extent to which San José properties deny voucher holders the opportunity to apply. Staff tracked all San José apartment rental listings on Craigslist and Apartments.com for four weeks between July and August of 2017. Staff tracked a total of 559 listings during this period and found that 26.7% of listings explicitly stated “no section 8.” To further clarify, staff posed as voucher holders and called properties that didn’t mention Section 8 in their advertisement to ask if the listings were available to Section 8 holders. Of those properties, 39.4% said verbally that they would not accept Section 8. In total, 66% of apartment listings indicated they would *not* accept vouchers. In addition, 29% of properties were unreachable on the phone. Therefore, only 5% of properties indicated they *would* accept Section 8 when asked by a theoretical applicant holding a voucher. These survey findings support the assertion that a significant number of properties in San José have chosen not to accept HCVs.

Stakeholder Input

Housing Department staff conducted a number of community meetings involving property owners and renters that discussed source of income policy. The specific dates and locations of these meetings can be found in the Public Outreach Section of this memorandum. Representative comments are below.

Landlords indicated various reasons why they chose not to participate in the HCV program. A primary reason stated was that they did not want to deal with the administrative burden of joining the program, such as getting properties inspected, and waiting for voucher payments to be received. One participant mentioned that if more landlords knew they could get close to market rents, they might be more willing to participate. Another landlord felt that the word “discrimination” should not be used with regards to this issue, as negative connotations of unjust discrimination based on race or income are not necessarily apt if one simply chooses not to want to join a program. Other comments focused on negative perceptions about and/or negative past experiences with HCV tenants. Some believed that such tenants with vouchers were more likely to damage apartments, while other landlords stated a reluctance to rent to people of certain races or income levels.

Landlords were wary of a source of income ordinance, noting that that ongoing education is critical if a new policy were to go into place, and that penalties should not be too severe especially for first offenses. They also mentioned that it would be helpful for SCCHA to conduct more outreach to landlords to explain the program and the rents that can be charged, and to improve the experience of landlords in the HCV program in order to attract more landlords to the program.

Tenant stakeholders indicated they had personally experienced or knew others who had difficulty finding a landlord who would accept vouchers. Tenants indicated that it was common for landlords to advertise “no section 8” in their listings. They strongly supported the creation of a

source of income ordinance in San José. Most indicated it should apply to all rental units to maximize the chances that tenants can utilize their vouchers. Stakeholders also expressed the desire to prevent a landlord's exit from the HCV program from permitting a just cause eviction of a voucher-holding tenant for non-payment.

Anti-discrimination Policies

It is important to place source of income discrimination into a larger human rights context, as do many large cities that employ much broader anti-discrimination policies. New York, Chicago, Dallas, San Francisco, Seattle, Philadelphia, and other cities have adopted local civil rights, anti-discrimination, and/or fair housing ordinances. Some of these cities operate human rights commissions to address a range of discriminatory actions relating to employment, housing, public accommodations, contracting practices, and more. San Francisco's human rights commission also offers technical assistance, information, and referrals to community groups, businesses, and government agencies.

Cities often implement these ordinances because some classes are not protected at the federal level such as sexual orientation. State and federal agencies often have a much larger volume of complaints and therefore a complaint at the state or federal level can be time consuming. Local cities are generally able to process complaints more promptly and can be less intimidating. Residents have a choice of jurisdiction under which they may file.

Therefore, as a large city, it would be appropriate and consistent with other large cities for San José to develop anti-discrimination policies, including a source of income ordinance. It could be argued that the City has an obligation to address these types of issues similarly to similarly-situated large cities. In the future, the City Council may wish to explore a broader anti-discrimination platform.

Draft Policy Framework

The Housing Department evaluated source of income policies from Marin County, Mill Valley, Corte Madera, San Francisco, East Palo Alto, Foster City, Santa Clara County, and Santa Monica. These policies were enacted over the past 20 years and vary in their objectives and their enforcement. The following section considers these ordinances and proposes a draft policy framework for San José.

A. Source of Income Policy Objectives

1. Encourage owners to fairly consider prospective tenants with housing subsidies.
2. Decrease the time it takes for voucher holders to find housing.
3. Decrease the likelihood that tenants with housing subsidies are displaced from San José.
4. Encourage, but not require, participation of apartment owners in HCV and other voucher programs.

- B. Define tenant subsidies as a source of income:** As noted above, California Source of Income law does not protect HCV holders and other rental subsidy holders from discrimination based on their source of income. As it stands, rental-subsidy holders, specifically HCV holders, are being turned away before they can even submit their application. Staff recommends defining the possession of rental subsidies as an ineligible reason to disqualify a prospective tenant. To be clear staff is not recommending that landlords be required to accept tenant based rental subsidies, but instead that a landlord must use other lawful criteria to select a tenant.
- C. Advertising:** As noted above, it is clear some San José landlords use advertisements to deny tenants with housing subsidies the opportunity to apply for units on the private market. Staff recommends the prohibition of all forms of advertisements or statements that explicitly discourage prospective tenants with housing subsidies from applying to rent a given unit.
- D. Applicability:** In some cities the source of income ordinance does not apply to single family homes, secondary dwelling units, duplexes or even small apartment buildings. Other ordinances exempt units where the owner shares either a kitchen or bathroom facility with the tenant. Staff recommends that a source of income ordinance apply to all rental housing to maximize its effectiveness and to ensure that larger households seeking to rent a single family home are protected.
- E. Enforcement – Publicly-initiated:** The type of enforcement varies between cities. Some allow for civil actions to collect damages and lawyer fees, and some allow for misdemeanor charges. Staff recommends that the City dedicate a staff position to coordinate closely with SCCHA, conduct ongoing outreach and education for apartment owners, and evaluate complaints relating to discriminatory advertisements. The Housing Department would issue a warning on the first offense relating to advertisements and then would issue administrative citations with increasing fines for subsequent advertisement-related offenses.
- F. Enforcement – Privately-initiated:** Some cities allow for complainants or certain representatives such as legal advocates to file civil actions against landlords who violate the jurisdiction's source of income ordinance. Staff recommends that the ordinance allow for privately-initiated actions be authorized for violation of the ordinance.
- G. Education and Outreach:** Landlords indicated that improved outreach and education might convince some landlords to accept tenants with housing subsidies. Staff recommends closer coordination with the Housing Authority and the Apartment Association to identify barriers and to conduct outreach to apartment owners to increase apartment owner participation in tenant based subsidy programs.

EVALUATION AND FOLLOW-UP

After receiving comments from HCDC, the Housing Department intends to bring this draft policy framework to City Council on April 24, 2018, for direction on crafting a source of income ordinance. If the City Council directs staff to develop an ordinance, staff intends to bring an ordinance back for consideration in Summer 2018.

PUBLIC OUTREACH

The Housing Department conducted the following outreach. A summary of the feedback received is included in the analysis section of this memorandum.

- February 6, 2018: Stakeholder Meeting: Renter's Coalition
- February 7, 2018: Public Meeting #1: City Hall
- February 12, 2018: Public Meeting #2: Seven Trees Community Center
- February 15, 2018: Stakeholder Meeting: California Apartment Association
- February 22, 2018: Stakeholder Meeting: Tenants

COST IMPLICATIONS

If the City Council directs staff to create a draft ordinance, the Housing Department's recommendation would include the addition of one staff person to be funded for two years by the City's Housing Authority Litigation Award funds. Staff would work with the Budget Office to integrate this request into the City Council action for ordinance approval.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

/s/
Jacky Morales-Ferrand
Director, Department of Housing

For questions, please contact Kristen Clements, Division Manager, at (408) 535-8236.

Attachment A: Santa Clara County Source of Income Ordinance

ORDINANCE NO. NS-507.1

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADDING DIVISION B37 RELATING TO AFFORDABLE HOUSING TO THE
COUNTY OF SANTA CLARA ORDINANCE CODE**

Summary

This Ordinance adds Division B37 relating to Affordable Housing to the County of Santa Clara Ordinance Code to address the severe housing crisis in Santa Clara County.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

Division 37 of Title B of the Ordinance Code of the County of Santa Clara relating to Affordable Housing is hereby added to the Ordinance Code to be titled and to read as follows:

**Division B37
AFFORDABLE HOUSING**

Sec. B37-1. Purpose and intent.

In enacting this Division, the Board of Supervisors intends to redress the severe housing crisis in Santa Clara County, which leaves thousands of County residents without homes or without secure housing. This Division is intended to help alleviate the housing crisis by ensuring that all persons with the ability to pay for housing are considered for housing, regardless of whether they receive a housing subsidy or housing assistance of any kind.

Sec. B37-2. Prohibited activity.

It is unlawful for any person to do any of the following as wholly or partially based on receipt of housing assistance:

- (a) To interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property, including, but not limited to, the rental thereof; to require different terms for such transaction; or falsely to represent that an interest in real property is not available for transaction;

- (b) To include in the terms or conditions of a transaction in real property any clause, condition, or restriction;
- (c) To refuse or restrict facilities, services, repairs or improvements for any current or prospective tenant or lessee;
- (d) To make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement, or advertisement with respect to a transaction in real property, or with respect to financing related to any such transaction, that unlawfully indicates preference, limitation, or discrimination based on receipt of housing assistance;
- (e) To use a financial or income standard for rental housing that privileges income earned directly by the tenant or prospective tenant, or rental payments made directly by the tenant or prospective tenant over housing assistance, or that discounts or discriminates against housing assistance payments.

Sec. B37-3. Definitions.

For purposes of this Division, “housing assistance” includes all housing and rental assistance programs, homeless assistance programs, security deposit assistance programs, and housing subsidy programs.

For purposes of this Division, “person” means any individual, firm, corporation, or other organization or group of persons however organized.

Sec. B37-4. Exception.

Nothing in this Division shall be construed to apply to the rental or leasing of a dwelling unit that is occupied by its owner or members of his or her family and that has no more than a single roomer or boarder.

Sec. B37-5. Civil enforcement action.

A civil action to enforce the provisions of this Division may be filed by any aggrieved person, by the County Counsel, or by any person or entity that will fairly and adequately represent the interests of that person or a protected class.

Sec. B37-6. Civil injunctive relief.

Any person who commits, or proposes to commit, an act in violation of this Division may be enjoined therefrom by any court of competent jurisdiction.

Sec. B37-7. Civil liability.

Any person who violates any provision of this Division or who aids in the violation of any provision of this Division shall be liable for mandatory damages of three times the amount of one month's rent that the landlord charges for the unit in question. All damages shall be awarded to the person whose rights were violated. The court may also award punitive damages in an amount of not less than \$200.00 and not more than \$400.00 per violation, as well as attorneys' fees and costs. In any action brought by the County Counsel, all damages and attorneys' fees and costs, shall be awarded to the County and deposited in the County Treasury.

Sec. B37-8. Separate civil liability for each violation.

Any person who violates any provision of this Division or who aids in the violation of any provision of this Division shall be liable for a separate civil violation for each provision of this Division that he or she violates, and for each instance in which he or she violates a provision of this Division.

Sec. B37-9. Criminal enforcement and liability.

Any person who violates any provision of this Division or who aids in the violation of any provision of this Division shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than \$1,000.00, or by imprisonment in the county jail for a period not exceeding six months, or both.

Sec. B37-10. Statute of limitations.

Any actions filed pursuant to this Division must be filed within two years of the alleged violation.

Sec. B37-11. Severability.

The provisions of this Division are severable. If any provision of this Division or any application of any provision of this Division is found invalid, the remainder of the Division, including the application of such provision to other persons or circumstances,

shall not be affected thereby and the remainder of the Division shall continue in full force and effect.

Sec. B37-12. No conflict with state or federal law.

Nothing in this Division shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. Nothing in this Division shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

Sec. B37-13. Effective date.

This division shall become effective on January 1, 2018.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on APR 25 2017 by the following vote:

AYES: ~~CHAVEZ. CORTESE. SIMITIAN. WASSERMAN. YEAGER~~

NOES: ~~WASSERMAN~~

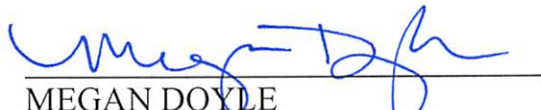
ABSENT: ~~NONE~~

ABSTAIN: ~~NONE~~



DAVE CORTESE, President
Board of Supervisors

ATTEST:



MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY



JAMES R. WILLIAMS
County Counsel

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