



Memorandum

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Councilmember Johnny Khamis
Councilmember Pam Foley
Councilmember Dev Davis
Councilmember Lan Diep

SUBJECT: SEE BELOW

DATE: August 9, 2019

APPROVED:

DATE

8/9/19

Johnny Khamis (with initials)
Pam Foley *Dev Davis* *Lan Diep*

SUBJECT:

AGENDA ITEM 4.4 – ACTIONS RELATED TO TITLE 5 OF THE SAN JOSE MUNICIPAL CODE FOR THE HOUSING PAYMENT EQUALITY ORDINANCE

RECOMMENDATIONS:

Accept Staff Recommendations with the following changes:

1. Modify the effective date for enforcement of ordinance to be one year from the date the ordinance is enacted, to allow for an adequate educational period.
2. Modify ordinance to provide rental property providers with 30-day right to cure period before civil legal action may be taken by applicants with a section 8 voucher against a rental property provider.
3. Modify the ordinance to make it explicit that it creates an equal opportunity for Section 8 voucher recipients to be considered for available rental units but that acceptance of a rental application does not create an automatic obligation to rent to the voucher holder.
4. Return to Council within six months with the identified incentives and plans to implement incentive programs for those who will be accepting Section 8 voucher recipients as tenants.

BACKGROUND:

We agree that it is important for Section 8 housing voucher holders to have an equal opportunity to access the rental market and that this is important in achieving the goals of housing the unhoused in our community and preventing families and individuals from becoming homeless. It is in the public interest, as well, for us to ensure that rental housing providers accept applications from all applicants, that they are treating all applicants fairly, and they are not disseminating advertising that is discriminatory against Section 8 recipients.

The City also has an interest in ensuring that we are not overburdening rental providers with onerous mandates in which they are not educated, we do not discourage their participation in the rental market, we avoid opening them up to frivolous lawsuits, we don't discourage rental

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Agenda: 08/13/2019

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housing investment and construction – especially of the ADUs we've been encouraging people to build - and that the rental property providers don't lose revenue when they rent to a Section 8 voucher holder instead of a renter without a Section 8 voucher. The ordinance, as presently drafted by staff, did not take these legitimate concerns into consideration, which is why we have proposed these modifications.

The state government, when it enacts new legislation, provides an adequate education and implementation period for those affected to learn about and make the changes necessary to accommodate the new laws. With a program like Section 8 that can affect the way a rental property provider does business, the City should also ensure there is an adequate period of time for the City and for the voluntary associations of rental property providers to educate the new participants who may have never interacted with a Federal housing program in the past. A one-year education and implementation period is reasonable for such a substantial new City mandate.

Next, we considered the fact that the new Section 8 ordinance was designed with a City complaint process focused on resolution between rental applicants and the property providers but at the same time is opening up property providers to a host of lawsuits. The burden of proof now shifts to the property provider to justify why he or she rented to a particular applicant – they are guilty until proven innocent. Placing a reasonable period of time for a rental property provider to resolve any dispute before the potential renter files a court action against them avoids the sort of lawsuit abuse that we have seen after the implementation of the Americans with Disabilities Act that deprives business owners of a chance to fix a problem before they are dragged into court and have to pay thousands of dollars in legal fees.

Another consideration in evaluating the proposed ordinance was that the wording of the ordinance seemed to imply that if one begins accepting applicants with Section 8 vouchers they would be obligated to rent to those applicants, notwithstanding other considerations. We recommend that staff modify the wording in a way as to make it more explicit that the right to apply does not automatically mean a right to occupy the unit applied for and that they must meet the other, normal rental criteria imposed on all applicants.

We also considered the very real concerns expressed by rental property providers about the differences between renting to someone with a private source of income and with a Section 8 voucher. When one accepts a Section 8 voucher, one becomes subject to the rules and regulations of a Federal program. These include an inspection requirement that can extend the move-in timeline for a renter by two or three weeks – a period of time in which the rental property provider will not be receiving income. We understand that the Housing Staff is working with the Housing Authority on what an incentive program will look like and ask that Staff bring back this incentive program information to the Council in six months.

The modifications we are proposing strike a balance between the interests of Section 8 voucher holders and our rental property providers while serving our community's interest in ensuring people in our community are housed and that they don't face discrimination just because they have a Federal housing subsidy. We encourage our colleagues to support these important changes.