

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 5 OF THE SAN JOSE MUNICIPAL CODE TO ADD A
NEW CHAPTER 5.10 RELATED TO HOUSING PAYMENT
EQUALITY**

WHEREAS, the City of San José (“City”), like much of the Bay Area and California, faces widespread challenges to addressing its affordable housing crisis which affects the City’s most vulnerable residents; and

WHEREAS, one of the valuable tools to help the City’s low-incomes residents afford housing is through rental assistance subsidies including the Housing Choice Voucher (“HCV” or “Section 8”) Program administered through the Santa Clara County Housing Authority; and

WHEREAS, many rental assistance voucher holders in the City are disqualified from renting an apartment because many landlords do not accept tenants with rental vouchers, thereby exacerbating the affordable housing crisis. To address this growing practice and alleviate the struggles that rental assistance voucher holders experience with finding housing, many local jurisdictions across the State and Country have adopted ordinances prohibiting landlords from using HCV and other tenant-based subsidies as grounds for disqualifying, rejecting or refusing to rent to an applicant; and

WHEREAS, California law prohibits rental discrimination against certain protected classes including one’s source of income; however, that protection does not cover payments made directly to a landlord from a third party on behalf of a tenant; and

WHEREAS, the lack of protection for rental assistance voucher holders in state law means these persons are unprotected and may be denied housing because they use rental assistance vouchers to pay a portion of their rent; and

WHEREAS, many jurisdictions throughout California have passed ordinances providing protections based upon an individual person's source of income. Santa Clara County, San Francisco, Berkeley, Mill Valley, East Palo Alto, Corte Madera, Marin County, San Diego, and Santa Monica have all adopted laws prohibiting discrimination against a person's source of income; and

WHEREAS, on December 11, 2018 the City Council accepted the staff report directing the City Attorney's Office, in coordination with the Housing Department, to develop a source of income discrimination ordinance, that would include a definition of source of income, prohibited activities, applicability, and enforcement; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

A new Chapter is added to Title 5 of the San José Municipal Code, to be numbered, entitled and to read as follows:

CHAPTER 5.10 HOUSING PAYMENT EQUALITY

Part 1 Purpose and Findings

5.10.100 Findings and Declaration

The City Council finds and declares as follows:

- A. The Housing Choice Voucher Program (HCV), commonly known as the Section 8 Program, provides rental subsidies to low-income residents so they can rent housing on the private market. Voucher holders across the U.S. experience difficulty finding housing where landlords will rent to them. Nationwide studies have estimated that at least 20% of all housing searches using an HCV are unsuccessful in obtaining housing.
- B. As of June 2019, there are 6,549 HCV recipients who are renting in San José and approximately 1,000 HCV actively seeking housing in the County of Santa Clara. 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, 52% are disabled heads of household, 20% are families with a person with disabilities who is not the head of household, 31% are families with minor children, and 8% are formerly homeless.
- C. The 2019 waitlist to participate in HCV last opened briefly in 2006 with 50,000 applicants and now has approximately 4,500 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 2006. As of June 2019, the Housing Choice Voucher utilization rate for Santa Clara County was 88% with approximately 1,465 voucher holders without a lease.

- D. A 2018 survey conducted by the San José Housing Department found that most landlords who listed apartments in San José on Craigslist.org and Apartments.com did not accept HCVs. The Housing Department found that 26.7% of the 559 listings reviewed explicitly stated “no section 8” and 39.4% verbally stated that they would not accept Section 8 or HCVs. In total, 66% of apartment listings indicated they would *not* accept vouchers. As of November 2018, over 2,000 housing choice vouchers went unused in San José and Santa Clara County.
- E. As of December 2018, forty-two (42) jurisdictions nationwide, including Santa Clara County, have adopted policies or ordinances protecting voucher holders with the goal of increasing housing options for rental voucher holders. A 2011 study prepared for the U.S. Department of Housing and Urban Development (HUD) found that voucher utilization rates improved by 4 to 11 percentage points in localities with source of income ordinances.
- F. The ordinance codified in this Chapter is being adopted pursuant to the City’s police power authority to protect the health, safety, and welfare of its citizens. Preventing discrimination against those low-income households receiving rental assistance is intended to address a pervasive discriminatory practice disproportionately affecting the disabled, single-parent female households, as well as those formerly homeless. A housing payment equality ordinance will provide increased access to opportunity for residents with low incomes which includes residents in protected classes including, but not limited to, color, religion, national origin, sex, disability, and familial status, in step with the City’s duty of affirmatively furthering fair housing.

5.10.100 Purpose

The purpose of this chapter is to enhance the public welfare by providing increased access to housing opportunities for low-income residents through a policy that prohibits different treatment of persons based upon whether they receive a rental assistance subsidy. This Ordinance is intended to promote equal consideration and treatment of Housing Choice Voucher Holders and other individuals who receive rental assistance through local agencies, Federal, State, or non-profit organizations. The adoption of a housing payment equality ordinance will enable tenants who are receiving financial assistance to be equally considered as candidates for housing and not systematically denied simply because of their source of income.

Part 2 Definitions

5.10.200 Definitions

The definitions set forth in this part shall govern the application and interpretation of this chapter. Words and phrases not defined in this Part 2 shall be interpreted so as to give this chapter its most reasonable application.

5.10.205 Aggrieved Person

“Aggrieved Person” includes any person who claims to have been injured, or will be injured, by a discriminatory housing practice related to their source of income.

5.10.210 Director

"Director" means the City's Director of the Department of Housing or the Director's designee.

5.10.215 Co-Living Community

“Co-Living Community” shall have the meaning provided in Section 20.200.197 of the San José Municipal Code.

5.10.220 Guest Room

“Guest Room” shall have the meaning provided in Section 20.200.460 of the San José Municipal Code.

5.10.225 Guesthouse

“Guesthouse” shall have the meanings provided in Sections 20.200.470 and 20.200.480 of the San José Municipal Code.

5.10.230 Landlord

“Landlord” means any individual, firm, corporation, or other organization or group of persons however organized, including their agent(s), that offers, or is otherwise involved in, the rental or leasing of residential real property.

5.10.235 Mobilehome

“Mobilehome” means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.

5.10.240 Mobilehome Park

"Mobilehome park" means any area or tract of land where two or more mobilehome lots are rented or leased, or held out for rent or lease, to accommodate mobilehomes used for human habitation for permanent, as opposed to transient, occupancy.

5.10.245 Multiple Dwelling

"Multiple Dwelling" shall have the meaning provided in Section 20.200.340 of the San José Municipal Code.

5.10.240 One-Family Dwelling

"One Family Dwelling" shall have the meaning provided in Section 20.200.320 of the San José Municipal Code.

5.10.245 Secondary Dwelling

"Secondary Dwelling" shall have the meaning provided in Section 20.200.325 of the San José Municipal Code.

5.10.215 Source of Income

"Source of Income" shall mean all lawful sources of income or rental assistance from any Federal, State, local or non-profit administered benefit or subsidy program including, but not limited to, the Section 8 Voucher Program.

5.10.255 Two-Family Dwelling

"Two- Family Dwelling" shall have the meaning provided in Section 20.200.330 of the San José Municipal Code.

Part 3

Applicability

5.10.300 Applicability

The provisions of this Chapter shall apply to the following:

- A. One-family dwellings, except those that are owner-occupied as the owner(s) primary residence;
- B. Two-family dwellings;
- C. Secondary dwellings;
- D. Co-Living Communities;
- E. Multiple Dwellings;
- F. Guest Rooms in any Guest House; and
- G. Mobilehomes and Mobilehome Parks.

Part 4

Prohibited Acts

5.10.400 Prohibited Acts

It shall be unlawful for a Landlord to do any of the following:

- A. To interrupt, terminate, fail or refuse to initiate the rental of real property based on an individual or household's source of income; or
- B. To falsely represent that an interest in real property is not available for rent, lease, or tenancy based on an individual or household's source of income; or

- C. To require different terms for such transaction based on an individual or household's source of income, unless those terms are lawfully required by the particular source of income; or
- D. To include in the terms or conditions of a transaction in real property any clause, condition, or restriction based on an individual or household's source of income, unless such terms or conditions are lawfully required by the particular source of income; or
- E. To refuse or restrict facilities, services, repairs or improvements for any current or prospective tenant or lessee based upon an individual's or household's source of income; or
- F. To in any way make, print, or publish, advertise or disseminate any notice, statement, or advertisement involving the rental of real property that unlawfully indicates preference, limitation, or discrimination based on an individual or household's source of income; or
- G. To use a financial or income standard in assessing eligibility for the rental of housing that is not based upon the portion of the rent to be paid by the tenant.

Part 5

Enforcement

5.10.500 Enforcement

- A. Notwithstanding subsection B. below, a civil action may be brought by the City Attorney and a court may assess a civil penalty in an amount up to \$10,000 per violation, payable to the City, against any Landlord who repeatedly violates this Chapter. The City Attorney may seek injunctive relief to restrain or enjoin any violation of this Chapter.

- B. The Director may enforce any violation of this Chapter, including the issuance of an administrative citation in accordance with Chapter 1.15 of the San José Municipal Code.
 - 1. First time violations of this Chapter shall result in a written warning prior to issuing a citation.
 - 2. For subsequent violations following the first violation, the Director may issue an administrative citation in accordance with Chapter 1.15 of the San José Municipal Code, with escalating fines for each subsequent violation, in an amount adopted by Resolution.
- C. Nothing under this Part shall preclude an aggrieved person from bringing a civil action in a court of competent jurisdiction for any violations of this Chapter.
- D. Reserved.

ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI TABER, CMC
City Clerk