

COUNCIL AGENDA: 12/11/18  
FILE: 18-1597  
ITEM: 4.3

## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** November 19, 2018

Approved

Date

11/29/18

**SUBJECT: DIRECTION ON THE CREATION OF A SOURCE OF INCOME  
ORDINANCE AND RENTAL SUBSIDY PROGRAM IMPROVEMENTS**

### RECOMMENDATION

Accept the staff report and:

1. Direct the City Attorney's Office to develop a source of income ordinance including, but not limited to, staff's recommended provisions on the definition of source of income, prohibited activities, applicability, and enforcement.
2. Direct the Housing Department to implement an education and outreach plan in coordination with Santa Clara County Housing Authority and other rental subsidy partners that considers process improvements and incentives to increase the use of rental subsidy programs.

### OUTCOME

This report explores the need for a source of income ordinance. It summarizes how other localities have addressed their rental market's lack of acceptance of rental subsidies. The report recommends development of a source of income ordinance and outlines the major provisions to be included. This report also provides an update on the Housing Department's plan to study fair housing issues and the development of a plan to address these issues.

### EXECUTIVE SUMMARY

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. The HCV program is administered by the Santa Clara County Housing Authority. The waitlist to obtain an HCV voucher contains more than 4,000 applicants. Voucher holders in San José are disproportionately disabled, female heads of households, formerly homeless, or people of color and are having trouble finding apartments within the allotted time at the risk of losing their

vouchers. However, a recent survey 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. As of November 2018, over 2,000 housing choice vouchers went unused in San José and Santa Clara County.

Landlords are not prohibited by federal or California law from rejecting a tenant based solely on the fact that he or she possesses a HCV or other tenant-based subsidies, nor are landlords required to consider subsidies as income when qualifying tenants. However, several jurisdictions, including Santa Clara County, have adopted local source of income ordinances 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.<sup>1</sup> In San José, stakeholders consulted during outreach were divided on the need and efficacy of adopting such an ordinance. Landlords were wary of a source of income ordinance. They noted that education is critical and that first-time offenders should not be harshly penalized. Tenants indicated that discrimination is pervasive and warrants the need for an ordinance that prohibits discrimination based on an applicant's source of income.

In addition to the HCV Program, the City and County of Santa Clara operate other local rental subsidy programs. These include rapid rehousing vouchers for residents who have experienced brief homelessness, and Veterans Administration Supportive Housing vouchers for veterans.

This memorandum recommends that staff draft an ordinance that prohibits discrimination based on an applicant's source of income. It also recommends the short-term dedication of resources to improve the landlord's experience participating in housing voucher programs. This includes exploration of potential additional incentives for landlords to increase participation in HCV and other rental subsidy programs. It is important to note that none of this work would force landlords to participate in a government housing program.

This memorandum also provides a brief update on the fair housing work that the Housing Department will be embarking on as a result of changes in State law and the federal requirement to further fair housing. This work will be completed in time for the City's submission of the 2020-2025 Consolidated Plan to HUD.

## **BACKGROUND**

On June 23, 2015, the City Council identified development of an ordinance prohibiting discrimination based on income source, along with revisions to the Apartment Rent Ordinance, as a policy priority for FY 2015-16. On September 1, 2015, the City Council accepted staff's recommendation that the source of income ordinance be delayed given that the City of Santa

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<sup>1</sup> Freeman, Lance (2011) The Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes, Assisted Housing Research Cadre Report

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 local Analysis of Impediments required by the U.S. Department of Housing and Urban Development as a basis for the City's Consolidated Plan. That action included direction to "explore the feasibility of an ordinance to address source of income discrimination." This memorandum addresses the City Council direction from April 25, 2017, and from 2015.

### ***Overview of Federal and Local Rental Subsidy Programs***

The HCV program provides rental subsidies to low-income tenants to help pay for housing in privately-owned apartments. Created in the 1970's, the program was designed to provide tenants increased mobility on where they could live and more choice about the housing type that best fit their needs. (Historically, federal housing construction programs have clustered families in low-income neighborhoods contributing to both concentrated poverty and racial segregation.)

The Santa Clara County Housing Authority (SCCHA) manages the City of San José Housing Authority's HCV program. SCCHA has 16,411 participants in its HCV program. The City Housing Authority contract with HUD supports 40% of the participants, however, approximately 74% of the housed participants rent a home or apartment in the City of San José. Under the HCV program, voucher holders pay 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. This percentage is unique, typically it is 30%, to Santa Clara County and is made possible by the Moving to Work demonstration program. The Housing Authority contracts with Abode Services to offer housing search assistance for those who request it.

The City of San José and the County of Santa Clara also fund a modest number of rental subsidies, as part of the strategy to end homelessness, to extremely-low income residents with rules similar to the HCV program. These rental programs target homeless individuals who are working, people with AIDS, homeless youth, families with children, domestic violence survivors, human trafficking victims and people exiting the criminal justice system. The majority of rental subsidies are funded under the Rapid Rehousing program that provides time-limited rental assistance, coupled with varying levels of case management to locate and stabilize the household. Housing search services are also provided to assist participants in finding a home. There are approximately 723 rapid rehousing opportunities available County-wide, and the City supports 200 of these slots. An additional 50 rental subsidy opportunities are supported by the Housing Opportunity People with AIDS program. To be successful, all of these programs rely on the availability of housing that will accept these subsidies.

### ***Challenges Faced by Subsidy Holders***

Voucher holders across the U.S. are experiencing difficulty finding landlords who will rent to them. Nationwide studies have estimated that at least 20% of all housing searches using a voucher are unsuccessful<sup>2</sup>. The Housing Choice Voucher utilization rate for San José was 87% and the rate for the rest of the County was 86% as of November 2018. Many apartment owners choose not to participate in housing voucher or rental subsidy programs for a variety of reasons including not wanting to participate in the administrative process of the programs and/or perceived attributes of voucher holders. Applicants with rental subsidies are often disqualified because landlords do not consider subsidies as part of the tenants' income, which results in subsidized tenants being unable to meet the minimum household income requirement for an apartment.

The issue is serious enough that over 42 jurisdictions nationwide have adopted policies or ordinances protecting voucher holders.<sup>3</sup> These major cities include San Francisco, Seattle, Minneapolis, Philadelphia, and New York City. A 2011 study prepared for HUD found that voucher utilization rates improved by 4 to 11 percentage points in localities with source of income ordinances.<sup>4</sup>

### ***California's Housing Laws Do Not Protect Voucher and Rental Subsidy Holders***

California's Fair Housing and Employment Act closely resembles the Federal Fair Housing Act and makes it unlawful to discriminate against numerous protected classes including one's source of income. However, California courts have held that California's source of income discrimination law does not prevent a landlord from declining to take Section 8 Tenants/HCV holders. Rather, California's source of income protection extends to "lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant" (Government Code Section 12927(i)) such as Social Security Supplemental Security Income, veterans' benefits, CalWorks, General Assistance, child support, alimony, unemployment insurance, pensions, and wages. In 2018, Governor Jerry Brown signed Assembly Bill 2219 (Ting) into law requiring landlords to allow tenants to pay rent through a third party. This was to help increase acceptance rates for emergency rent assistance for existing residents. However, AB 2219 does not require landlords to participate in federal, State or local housing assistance programs. The bill does not prohibit advertisements that indicate preference, limitation or discrimination based on the receipt of housing assistance; nor does it directly prohibit landlords from using qualification standards that privilege income earned directly by a prospective tenant.

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<sup>2</sup> Finkel, M. and L. Buron (2001) Study on Section 8 Voucher Success Rates: Volume 1 Quantitative Study of Success Rates in Metropolitan Areas. Washington D.C., Abt Associates. 1.

<sup>3</sup> <https://affordablehousingonline.com/source-of-income-antidiscrimination-laws> accessed on 2/25/18.

<sup>4</sup> Freeman, Lance (2011) The Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes, Assisted Housing Research Cadre Report

While federal and State housing laws do not protect rental subsidy holders, local jurisdictions are able to pass ordinances to fill that gap. Santa Clara County, San Francisco, Berkeley, Mill Valley, East Palo Alto, Corte Madera, Marin County, San Diego, and Santa Monica have adopted source of income ordinances. These ordinances prohibit owners from using HCVs and other tenant-based subsidies as the grounds for rejecting or refusing an applicant.

*Santa Clara County Adopted a Source of Income Ordinance*

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 the County ordinance is provided as **Attachment A**.

**ANALYSIS**

The Housing Department has formulated key provisions of an ordinance intended to meet the City Council direction to develop an ordinance prohibiting discrimination based on income source.

In developing the provisions of a source of income ordinance, staff considered the following sources of information:

- Completed an analysis of online advertisements for housing;
- Reviewed the utilization rates of local subsidy programs;
- Evaluated the demographics of the HCV Program;
- Evaluated other source of income ordinances in California; and,
- Considered stakeholder feedback.

The results of this analysis is provided in the following sections of this document.

### ***Many San José Apartment Owners Do Not Accept Housing Choice Vouchers***

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 during July and August of 2017. Staff tracked a total of 559 listings during this period, who's rents were at a below the HCV payment standard, and found that 26.7% of listings explicitly stated "no section 8." To further clarify, staff posed as voucher holders and called properties that did not mention Section 8 in their advertisement to ask if the listings were available to HCV holders. Of those properties, 39.4% said verbally that they would not accept Section 8 or HCVs. In total, 66% of apartment listings indicated they would *not* accept vouchers. These survey findings support the assertion that a significant number of properties in San José have chosen not to accept HCVs.

### ***Many People Cannot Use their Housing Subsidies***

The San José Metro Area (which includes Santa Clara and San Benito Counties) is the second most expensive rental and homeownership market in the Country.<sup>5</sup> Demand for the HCV program in Santa Clara County is extremely high. The current waitlist last opened briefly in 2006 with 50,000 applicants and now has approximately 4,000 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 for the past 12 years.

As mentioned earlier, the success of both the HCV program and our local subsidy programs depends on the willingness of landlords to accept rental subsidies. In November 2018, there were 16,775 HCVs in San José and Santa Clara County of which approximately 2,000 were not utilized. During that same time, an estimated 766 Moving to Work voucher holders were shopping for apartments in Santa Clara County. According to the Santa Clara County Housing Authority, only 63% of voucher holders searching for apartments in the second half of 2017 were successful.<sup>6</sup> If this success rate were applied to clients who are currently shopping for apartments, nearly 1,500 vouchers could remain unused Countywide. HCV holders who cannot find an apartment in 120 days are referred to Abode services for search assistance and are given a 60-day extension. Tenants who cannot find an apartment during the extension period face losing their voucher and possible homelessness, with no possibility of applying for a new voucher as the HCV waiting list is closed.

### ***Demographics of the Housing Choice Voucher Program***

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 who are renting in San José. Compared to the average population, voucher

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<sup>5</sup> National Housing Conference, Paycheck to Paycheck Report for 2017; <https://www.nhc.org/publication/paycheck-to-paycheck-2017/>

<sup>6</sup> Santa Clara County Housing Authority, Voucher holder success rate from June 2017 – January 2018.

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 person with disabilities who is not the head of household, 24% are female heads of household, 13% are families with minor children, and 8% are formerly homeless.<sup>7</sup>

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 (**Table 1**) 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.

Data from Table 1 indicates that these households are disproportionately represented in the HCV population. This means that refusals to accept HCV has a higher likelihood of impacting communities of color who are overrepresented in the voucher population.

**Table 1: Racial Composition of San José Households with Housing Choice Vouchers**

<b>Race (based on Head of Household)</b>	<b>Households with HC Vouchers</b>	<b>%</b>	<b>Renter Households - Severe Housing Cost Burden<sup>8</sup></b>	<b>%</b>	<b>All Households</b>	<b>%</b>
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	

<sup>7</sup> Santa Clara County Housing Authority, 2018

<sup>8</sup> HUD defines 'severe cost burden' as paying more than 50% of income on housing costs.

### ***Owners Are Wary of an Ordinance – Tenants Experience Difficulty Finding Housing***

The Housing Department conducted a number of community meetings involving property owners and renters that discussed source of income policy. The specific dates 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 a landlord simply chooses not to join a program. Other comments focused on negative perceptions 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 said they had personally experienced or knew others who had difficulty finding landlords who would accept vouchers. Tenants reported 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 thought it should apply to all rental units to maximize the chances that tenants can utilize their vouchers.

### ***California Cities Have Adopted Source of Income Ordinances***

The Housing Department evaluated source of income policies from Marin County, Mill Valley, Corte Madera, San Francisco, Berkeley, East Palo Alto, Foster City, Santa Clara County, San Diego and Santa Monica. These policies were enacted over the past 20 years, with San Diego recently passing their ordinance in July 2018, and vary in their objectives. **Attachment B** compares the core elements of these ordinances and provides context for the staff recommendation.



### **Source of Income Ordinance**

After considering the research, analysis, and public input summarized above, the Housing Department drafted the following objectives to guide the development of an ordinance prohibiting discrimination based on a tenant's source of income:

1. All persons with the ability to pay for housing should be treated equally for housing, regardless of whether they receive a housing subsidy or housing assistance of any kind.
2. The time it takes for a voucher holder to find housing should not be adversely impacted due to source of income.
3. Tenants with housing subsidies should not be displaced from San José.
4. Education is necessary to increase landlord awareness of housing rental subsidy programs.

### ***Recommended Ordinance Provisions***

The following section recommends the core provisions to include in an ordinance prohibiting discrimination based on the tenant's source of income. These provisions address the objectives previously stated.

#### **1. Definition of Source of Income and Assets**

The Ordinance would define source of income to include all housing and rental subsidy programs, including programs that provide security deposit assistance.

#### **2. Prohibited activities**

The Ordinance would prohibit a landlord from imposing different terms or conditions on tenants with rental subsidies compared to those without rental subsidies, advertising that housing vouchers are not accepted, or using a financial or income standard that favors tenants with income not supplemented by a rental subsidy. Landlords could not say a unit is available for one applicant and say it is unavailable for voucher holder with equal or greater income.

#### **3. Applicability**

The Ordinance would apply to all rental housing, regardless of building size, to maximize its effectiveness and to ensure that larger households seeking to rent a single-family home are also protected. An exception would be provided for an owner-occupied home that has no more than a single tenant, where the owner complies with the ordinance's prohibition on advertisements that discriminate on the basis of source of income.

#### **4. Enforcement**

The Ordinance would contain two different enforcement provisions, publicly- and privately-initiated enforcement. A city-initiated provision would utilize the City's administrative citation procedures. The procedure would allow a warning to be issued to first-time

offenders, but subsequent offenders would receive administrative citations with gradually increasing monetary fines. Privately-initiated enforcement would allow for tenants or certain representatives such as legal advocates to file civil actions against landlords who violate the ordinance. When possible, funding should be allocated for low-cost tenant legal services to assist with privately-initiated enforcement.

To a large extent, the recommended provisions align with the County's Ordinance. However, staff is not recommending a criminal enforcement provision that mirrors the County Ordinance. This decision is based on stakeholder feedback and staff's recommendation to focus on education and process improvements to increase landlord participation.

***Increase Education and Explore Incentives and Administrative Efficiencies to Increase Landlord Participation***

Additional education about HCV and other housing subsidy programs is a key component to gaining broader landlord participation. In some cases, payment standards are comparable with market rents but not all landlords are aware of this. City staff could develop an education and outreach plan to help address such misconceptions.

The Santa Clara County Housing Authority has responded to landlord feedback by streamlining its leasing process, providing incentives to re-rent apartments to HCV holders, offering a lease-up bonuses for new owner participants, and the appointment of an owner ombudsperson. However, during the public outreach process on this subject, landlords commented that they believe housing voucher program administration could be further improved to speed up payments, reduce paperwork, and to minimize financial landlord risk.

Housing Department staff could work with the Santa Clara County Housing Authority and stakeholders to explore possible administrative improvements and landlord incentives that would increase acceptance of housing vouchers.

**Other Cities Have Adopted Broader Human Rights and Fair Housing Ordinances**

Source of income ordinances are often part of a much broader local civil rights framework that may include housing, employment, and public accommodations. Many large cities including New York, Chicago, Dallas, San Francisco, and Seattle have adopted ordinances, convened commissions, and created technical assistance programs to educate the public and evaluate claims of discrimination, harassment and retaliation. These ordinances can also play a role in promoting and protecting human rights. They can provide a framework to integrate human rights into local policy ensuring dignity, equality and opportunity for everyone within their jurisdiction. The City of San José does not have a local housing or human rights ordinance.

### **Efforts to Strengthen and Enforce Fair Housing Laws**

On September 30, 2018, Governor Jerry Brown signed California Senate Bill 686 requiring all California cities and counties to affirmatively further fair housing and to conduct fair housing assessments using the 2015 federal Affirmatively Furthering Fair Housing (AFFH) rule. As a result, localities receiving federal entitlement funding will be required to document patterns of residential segregation and to take meaningful steps toward increasing access to opportunity for residents with low incomes and those in protected classes including, but not limited to, color, religion, national origin, sex, disability, and familial status. The City of San José receives entitlement funding of approximately \$14 million and will be required to complete an AFFH plan.

The Housing Department, in coordination with the County of Santa Clara, will begin working on developing an AFFH plan beginning in 2019. The AFFH plan requires that the City identify who lives where, by race, national origin, and other characteristics, and assess how those residential patterns affect access to opportunity. Key barriers to fair housing must be identified, and goals must be set for addressing those barriers, complete with metrics and timelines. Those goals will inform how HUD funds will be used. The development of the AFFH plan requires a robust community engagement process with an emphasis on those most affected. The AFFH plan will be completed in early 2020, will be brought to the City Council, and will be submitted with the HUD 2020-2025 Consolidated Plan.

### **EVALUATION AND FOLLOW-UP**

If the City Council directs staff to develop an ordinance, staff will draft an ordinance, host public and stakeholder meetings, and to return to City Council this spring.

The AFFH plan will be included in the HUD 2020-2025 Consolidated Plan that will be reviewed by the City Council in the spring of 2020.

### **PUBLIC OUTREACH**

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

- December 12, 2017: Stakeholder Meeting: Renter's Coalition
- January 10, 2018: Stakeholder Meeting: Renter's Coalition
- January 29, 2018: Stakeholder Meeting: California Apartment Association
- 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
- March 8, 2018: Housing and Community Development Commission

### **COORDINATION**

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

### **COMMISSION RECOMMENDATION/INPUT**

On March 8, 2018, City staff presented a draft source of income discrimination policy framework to the City's Housing and Community Development Commission (HCDC). The Commission unanimously passed the following motions:

- HCDC accepted the staff report and provided feedback on the policy framework. (12-0)
- HCDC passed a motion suggesting that the City incorporate and research incentives for landlords to participate in housing voucher programs. (12-0)
- HCDC passed a motion recommending that the City conduct research on ways to prequalify landlord units for Housing Choice Voucher consideration. (11-0-1; Nguyen)

A summary of the public input received from this meeting, as well as comments from the Commissioners, is provided as **Attachment C**.

### **FISCAL/POLICY ALIGNMENT**

A Source of Income Ordinance aligns with the following General Plan goals:

H-1.7 Comply with State and Federal laws prohibiting discrimination in housing and that support fair and equal access to housing.

H-1.16 Identify, assess, and implement potential tools, policies, or programs to prevent or to mitigate the displacement of existing low-income residents due to market forces or to infrastructure investment.

This also responds to goal 1.12 in the City's Analysis of Impediments to Fair Housing which states, "explore the feasibility of an ordinance to address source of income discrimination."

HONORABLE MAYOR AND CITY COUNCIL

November 19, 2018

**Subject: Source of Income Ordinance and Voucher Program Improvements**

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### **COST SUMMARY/IMPLICATIONS**

If the City Council were to direct staff to implement a Source of Income Discrimination Ordinance, the Housing Department would return with a plan to oversee administration of the ordinance. This would likely entail the request to add a limit dated position. This position would evaluate and track complaints, educate landlords on housing subsidy programs, coordinate with the Housing Authority and other stakeholders on possible process improvements and incentives, and address enforcement of the ordinance. Funding for administration of the Ordinance would be determined and presented as part of the plan.

### **CEQA**

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/

JACKY MORALES-FERRAND

Director, Housing

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

**Attachment A:** Santa Clara County Source of Income Ordinance

**Attachment B:** Comparison of Jurisdictions with a Source of Income Ordinance

**Attachment C:** Summary of Public Input from the Housing and Community Development Commission

**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~~

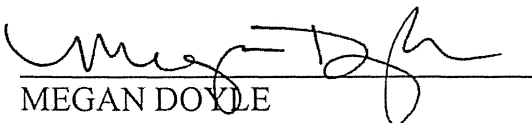
ABSENT: ~~NONE~~

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

1483638

## Attachment B: Comparison of Jurisdictions with a Source of Income Ordinance

Jurisdiction	Prohibited Activities	Applicability	Enforcement	Penalty
<b>Santa Clara County</b>	On the basis of source of income, it is unlawful to refuse to conduct a transaction, include special conditions, restrict access to facilities, or to advertise preference based on source of income.	Exempts owner occupied units with a single roomer or boarder	Civil action 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.	Mandatory damages of three times rent. Punitive damages from \$200 - \$400 per violation, as well as attorneys' fees and costs awarded by a court. In any action brought by the County Counsel, all damages and attorneys' fees and costs, awarded to the County and deposited in the County Treasury.
<b>San Francisco</b>	"source of income" means all lawful sources of income or rental assistance from any federal, State, local, or nonprofit-administered benefit or subsidy program. "Source of income" also means a rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program. "Source of income" includes any requirement of any such program or source of income, or rental assistance.	Exempts units where owner shares bathroom/kitchen with other units.  Exempts 3 units and fewer	Civil injunctive action, brought by aggrieved party, county counsel, the DA, or any entity that "fairly and adequately represents the interests of the protected class."	Only for the removal of the notice.

## Attachment C: Comparison of Jurisdictions with a Source of Income Ordinance

<b>Marin County</b>	"source of income" means all lawful sources of income or rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program. Source of income includes any requirement of any such program or source of income or rental assistance.	All housing	Civil injunctive action, brought by aggrieved party, county counsel, the DA, or any entity that "fairly and adequately represents the interests of the protected class."	Civil: Three times the amount of one month's rent, among other penalties. Criminal penalty: misdemeanor with a fine of up to \$1000 and/or six months in jail.
<b>Mill Valley</b>	"source of income" means all lawful sources of income or rental assistance program, security deposit assistance program or housing subsidy program. On the basis of source of income unlawful to refuse to conduct a transaction, include special conditions, restrict access to facilities, or to advertise preference based on source of income.	Exempts five units and fewer	Mediation first, then a complainant can initiate civil action; no city enforcement.	None noted
<b>Corte Madera</b>	Unlawful for the owner or manager of rental housing to discriminate against an existing tenant on the basis of that tenant's use of a Section 8 rent subsidy. It is a violation to refuse to accept a Section 8 rent subsidy for which an existing tenant qualifies, or to terminate the tenancy of an existing tenant based on the property owner's or manager's refusal to participate in a Section 8 rent subsidy program for which an existing tenant has qualified.	Exempts 10 units or less.  Applies to existing tenants only	Mediation first, then a complainant can initiate civil action; no city enforcement.	None noted

## Attachment C: Comparison of Jurisdictions with a Source of Income Ordinance

<b>East Palo Alto</b>	"source of income" means all lawful sources of income or rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program. Source of income includes any requirement of any such program or source of income or rental assistance.	Exempts units where owner shares bathroom/kitchen with another unit  Exempts 3 units and fewer	Civil injunctive action, brought by aggrieved party, City Attorney or any entity that "fairly and adequately represents the interests of the protected class."	Civil: Three times the amount of one month's rent, among other penalties.  Criminal penalty: misdemeanor with a fine of up to \$1,000 and/or six months in jail.
<b>Foster City</b>	Unlawful for the owner or manager of rental housing to discriminate against an existing tenant on the basis of that tenant's use of a Section 8 or any other rent subsidy. It shall be a violation of this prohibition for a property owner or manager to refuse to accept a Section 8 or any other rent subsidy for which an existing tenant qualifies, or to terminate the tenancy of an existing tenant based on the property owner's or manager's refusal to participate in a Section 8 or any other rent subsidy program for which an existing tenant has qualified.	Exempts 10 and fewer	Mediation first, then a complainant can initiate civil action; no city enforcement.	None noted
<b>Santa Monica</b>	"source of income" includes any lawful source 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.	All units	Civil injunctive action, brought by aggrieved party, City Attorney or any entity that "fairly and adequately represents the interests of the protected class."	Violations liable to pay for actual damages or for statutory damages of between \$1,000 and \$10,000

## **Attachment C:**

### **Summary of Public Input from the Housing and Community Development Commission Meeting on March 8, 2018**

Members of the public commented that the first HCV payment sometimes took much longer than anticipated, that landlords should have the right to decline because government programs come with strings attached, and concerns that the Housing Authority can reduce the payment standard. Other stakeholders called for a more systematic approach including organizations that administer security deposit programs and for incentives to get more landlords to participate.

HCDC commissioners commented that only enforcing violations related to advertising would be insufficient to help voucher holders secure apartments. Some Commissioners stated that San José's ordinance should at least match the Santa Clara County source of income ordinance if not exceed it. A few commissioners asked how effective such ordinances have been in other Cities. Some commissioners were concerned an ordinance would limit landlord's ability to manage risk and that voucher program administration should be improved in tandem. One Commissioner suggested using funds for faster initial payments to landlords instead of adding a new staff position. Finally, one Commissioner asked if the ordinance would allow landlords to decline to participate if the payment standard approved by the housing authority was too low for a given unit.