

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Jacky Morales-Ferrand
Jim Shannon

SUBJECT: SEE BELOW

DATE: August 6, 2019

Approved

D. DSYL

Date

8/7/19

SUBJECT: HOUSING PAYMENT EQUALITY ORDINANCE (FORMERLY REFERRED TO AS THE SOURCE OF INCOME ORDINANCE) AND UPDATE ON SANTA CLARA COUNTY HOUSING AUTHORITY RENTAL SUBSIDY PROGRAM IMPROVEMENTS

REPLACEMENT

REASON FOR REPLACEMENT

This replacement memorandum is being submitted to correct the summary of public comments provided by landlords during the outreach process.

RECOMMENDATION

- (a) Approve an ordinance amending Title 5 of the San José Municipal Code to add a new Chapter 5.10 related to a Housing Payment Equality Ordinance.
- (b) Adopt the following Fiscal Year 2019-2020 Appropriation Ordinance Amendments in the Multi-Source Housing Fund:
 - (1) Increase the appropriation to the Housing Department for Personal Services by \$84,000; and
 - (2) Decrease the City Housing Authority Reserve by \$84,000.

OUTCOME

The adoption of the Housing Payment Equality Ordinance (formerly known as the Source of Income Ordinance) will enhance housing stability for tenants by providing increased access to housing options for low-income residents who receive rental assistance subsidies. It will achieve this by prohibiting rejection of prospective tenants who receive rental assistance. By adopting this Ordinance, voucher holders and rental assistance recipients may have a higher likelihood of finding housing in the City of San José.

EXECUTIVE SUMMARY

Staff has developed the proposed Housing Payment Equality Ordinance (“Proposed Ordinance”) based on City Council’s direction. The Proposed Ordinance prohibits a landlord’s rejection of tenants with rental assistance subsidies who apply for rental housing. There are various voucher programs and rental assistance programs serving residents of the City of San José and Santa Clara County at large. The largest voucher program is the Housing Choice Voucher Program (HCV), commonly known as the Section 8 Program, which provides rental subsidies to low-income residents so they can rent housing on the private market. The City of San José and 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.

Staff analyzed five different areas of impact indicating a need for a Housing Payment Equality Ordinance: 1) rental subsidy holders experience greater challenges to finding housing, 2) rental voucher holders who experience these challenges are in most cases low-income, rent-burdened, and more vulnerable to homelessness, 3) there are fewer opportunities for low-income tenants and greatly increasing the chance of losing the rental voucher, 4) local and State laws currently do not protect voucher holders against a landlord’s rejection of their source of rent payment, and 5) ordinances prohibiting source of income discrimination have been adopted by thirteen other California jurisdictions.

There are three core provisions in the Proposed Ordinance. First, the Proposed Ordinance explains that all rentals are covered including single family homes, duplexes, multiple unit dwellings with three apartments or more, co-living apartments, accessory dwelling units, guest houses, and mobilehomes. The only exclusion are rooms rented within a single family home where the landlord lives within the home. Second, the Proposed Ordinance identifies the prohibited activities such as imposing different terms or conditions, advertising that housing vouchers are not accepted, or using a financial or income standard that is not based upon the portion of rent to be paid by the tenant. Third, the Proposed Ordinance provides enforcement provisions.

The Housing Department has been and will continue to engage in strategic meetings with the Santa Clara County Housing Authority (SCCHA) to address initiatives and collaborate on additional program monitoring and implementation of incentives. As part of this City Council action, staff is recommending funding for temporary staff to work with SCCHA to develop and implement public outreach, implementation, and enforcement of the Proposed Ordinance.

BACKGROUND

On December 11, 2018, City Council directed the City Attorney’s Office to develop an ordinance that would help to ensure that all persons with an ability to pay for housing are equally considered, regardless of whether or not they receive rental subsidies. The City Council further directed staff to conduct analysis and return with the following:

- ***Draft housing payment equality ordinance*** – Direct the City Attorney’s Office to develop an ordinance including, but not limited to, staff’s recommended provisions on the definition of source of income, prohibited activities, applicability, and enforcement.

- **Implement education and outreach plan** – 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.
- **Convene stakeholder meetings to identify a workplan for improvements in voucher programs** – Direct the Housing Department to convene landlords and representative organizations, including the California Apartment Association; staff from Santa Clara County Housing Authority and the County of Santa Clara; and voucher holders and tenant representatives to identify a workplan for continued improvements in streamlining lease-up, payment, reducing paperwork, and mitigating landlord risk in the voucher program.
- **Explore administrative improvements and landlord incentives** – Explore the following specific areas of possible administrative improvements and landlord incentives to increase the acceptance of housing vouchers: 1) speeding up the process of unit inspection required for landlords to be eligible to accept Housing Choice Vouchers; 2) speeding up the time a landlord will get the first rent check from the voucher program; and 3) simplifying paperwork, processes, or regulations that burden landlords who want to accept HCVs.

A summary of past City Actions is in **Table 1**.

Table 1: Previous City Actions Pertaining to the Housing Payment Equality Draft Ordinance

Date	Source	Actions
<u>June 23, 2015</u>	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.
<u>September 1, 2015</u>	City Council	Accepted staff recommendation for Source of Income Ordinance be delayed given that the City of Santa Monica’s Source of Income Ordinance was being challenged in court.
<u>April 25, 2017</u>	City Council	Adopted the local Analysis of Impediments (AI) 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.”
<u>March 8, 2018</u>	Housing and Community Development Commission	Accepted staff recommendation and to also include incorporating and researching incentives for landlords to participate in Section 8, and conducting research on ways to prequalify landlord units for Section 8 consideration.
<u>December 11, 2018</u>	City Council	Accepted staff recommendation to draft a Source of Income Ordinance.

ANALYSIS

Staff has developed the proposed Housing Payment Equality Ordinance (“Proposed Ordinance”) based on City Council’s direction. The Proposed Ordinance prohibits a landlord’s rejection of tenants with rental assistance subsidies who apply for rental housing.

I. NEED FOR A HOUSING PAYMENT EQUALITY ORDINANCE

Staff analyzed five different areas of impact indicating a need for a Housing Payment Equality Ordinance. First, rental subsidy holders experience greater challenges to finding housing in San José than non-subsidized tenants due to widespread landlord policies against renting to them. Second, rental voucher holders who experience these challenges are in most cases low-income, rent-burdened, and more vulnerable to homelessness. Third, this discrimination results in fewer opportunities for low-income tenants to find affordable housing, making it more difficult to afford other basic necessities for themselves and their family, and greatly increasing the chance of losing the rental voucher. Fourth, local and State law currently do not protect voucher holders against a landlord’s rejection of their source of rent payment. Lastly, ordinances prohibiting source of income discrimination have been adopted by thirteen other California jurisdictions.

- A. Challenges Rental Subsidy Holders Experience Trying to Rent in San José** – Both statistical and anecdotal evidence show that many landlords in San José refuse to accept housing vouchers. A 2018 survey conducted by the San José Housing Department found that most landlords who listed available apartments in San José on Craigslist.org and Apartments.com did not accept Housing Choice Vouchers. The results found that landlords: 39% would not accept vouchers, 27% advertised that no vouchers would be accepted, 29% were not reachable, and 5% indicated they would accept vouchers. More recent studies have reached similar conclusions. A 2018 investigation commissioned by HUD and carried out by the Urban Institute found that, nationally, an average of one in 40 advertised apartments was potentially eligible for rental with a Section 8 voucher.
- B. Those affected are low-income and more vulnerable to homelessness** – Voucher holders are families, disabled, formerly homeless, and people of color and they have trouble finding apartments within the allotted time at the risk of losing their vouchers. Voucher holders have 120 days to find housing with an option to request an additional 60 days, or otherwise risk losing their voucher. According to SCCHA, as of June 2019, the demographics of voucher holders in San José are: 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. Underutilization of subsidy holders** – The underutilization of the voucher results in impacts on funding and prolongs exhaustion of the current waiting list. According to the SCCHA, as of July 15, 2019, the waitlist to obtain a Housing Choice Voucher contains more than 4,500 applicants. Additionally, nearly 1,000 various voucher holders are currently seeking housing (see **Table 2**). This ordinance aims to give households an increased ability to successfully use vouchers to acquire suitable housing available on the market.

D. Local and State law currently does not protect voucher holders – Currently in the City of San José, landlords can reject a prospective tenant who has a Housing Choice Voucher or other rental subsidy. However, several jurisdictions, including Santa Clara County for unincorporated areas, 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. This evidence is consistent with the notion that source of income nondiscrimination laws that facilitates the utilization of housing vouchers and associated with access to a more expanded range of neighborhoods available to voucher recipients.

On the state level, Senate Bill 329 (“SB 329”) is under consideration by the California legislature during the 2019-2020 legislative session. SB 329 proposes amendments to California’s Fair Employment and Housing Act (FEHA) that would broaden the definition of “source of income” to include “*lawful, verifiable income paid directly to a tenant, or paid to a housing landlord or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937.*” A copy of the legislation is included in **Attachment A**. The passage of SB 329 would expand statewide protection against source of income discrimination to include income paid through rental subsidies. The bill would only affect a small percentage of landlords in California. Many local jurisdictions have adopted legislation to address this form of rejection of a tenant due to their source of payment. If the legislature passes SB 329, these protections will be extended to voucher holders across the state of California.

E. Source of income nondiscrimination have been enacted by a number of California jurisdictions – Over 42 jurisdictions nationwide have adopted policies or ordinances protecting voucher holders. In California, protected source of income ordinances have been enacted in the following 13 jurisdictions: Berkeley, Corte Madera, East Palo Alto, Fairfax, Novato, San Anselmo, San Diego, San Rafael, Santa Monica, Woodland, Marin County, and as of June 2019, Los Angeles, Los Angeles County and Santa Clara County (for unincorporated areas).

II. Subsidy Programs in San José and Santa Clara County

There are various voucher programs and rental assistance programs serving residents of the City of San Jose and Santa Clara County at large. The summary in **Table 2** of rental subsidy programs that would be impacted by this Proposed Ordinance. The largest voucher program is the Housing Choice Voucher Program (HCV), commonly known as the Section 8 Program, which 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 HCV program provides rental subsidies to low-income tenants to help pay for housing in privately owned apartments. Under the HCV, voucher holders pay 32% of their gross income toward rent, and SCCHA pays a property landlord the difference between the renters’ payment and the SCCHA approved market rent up to SCCHA’s “payment standard” (a rental payment cap set per bedroom size of the rental unit).

The City of San José and County of Santa Clara also funds 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, such as Rapid Rehousing, 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. In addition, renters are benefiting from the ability to utilize the rent subsidy programs at available and eligible rental units from apartments to mobilehomes. According to the SCCHA, as of March 2019, there are 33 voucher holders in mobilehomes.

Table 2: Selected Summary of Rental Subsidy Programs in Santa Clara County and SCCHA's Targeted Vouchers for Special Needs Population

Rental Subsidy Programs	Total Vouchers Available	Lease Rate as of the end of June 2019	Active Shopping Vouchers as of the end of June 2019	Outstanding Vouchers – Not Issued
Administered by the Santa Clara County Housing Authority*				
<u>Housing Choice Voucher Program</u>	16,775	88%	553	1,465
<u>Family Unification Program (FUP)</u>	100	94%	3	3
<u>Moderate Rehabilitation Program</u>	75	95%	1	4
<u>Non-Elderly Persons with Disabilities (NED)</u>	99	52%	35	13
<u>Veterans Affairs Supportive Housing (VASH)</u>	1,222	76%	68	226
Administered by the City of San José**				
<u>Rapid Rehousing</u>	840	62%	316	0
<u>Housing for People with AIDS (HOPWA)</u>	68	85%	0	10
Total	19,179		976	1,721

*Source: Santa Clara County Housing Authority "Housing Department Activities through June 2019" Report to Board of Commissioners. Note that the agency does not issue all available vouchers.

**Source: City of San José – Housing Department through June 2019

III. General Overview of the Proposed Ordinance

Below describes the core provisions in the Proposed Ordinance:

- A. Rental Housing Covered by the Proposed Ordinance** – The Proposed Ordinance explains that all rentals are covered including single family homes, duplexes, multiple unit dwellings with three apartments or more, co-living apartments, accessory dwelling units, guest houses, and mobilehomes. The only exclusion are rooms rented within a single family home where the landlord lives within the home.

- B. *Prohibited Activities*** – The Proposed 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 is not based upon the portion of rent to be paid by the tenant. Refusal to initiate renting to a tenant with rental subsidies or terminating an existing tenancy would also be prohibited solely because of source of income
- C. *Enforcement*** – Similar to the Apartment Rent Ordinance, there are various options to enforce the Proposed Ordinance. First, the City Attorney’s Office may bring a civil action in Superior Court for repeated violations of the Ordinance. Second, the Director may also issue an administrative citation if a violation occurs following an initial warning. Third, an aggrieved person may bring their own cause of action in Superior Court.

If this Proposed Ordinance was enacted, the rental application process would typically be administered as follows:

- ***Advertisement*** – A landlord with a housing unit to rent would be prohibited from using phrases such as “No Section 8” in any rental listing or otherwise rule out renting to a voucher holder.
- ***Interested voucher holder*** – A voucher holder interested in renting the unit would submit a rental application. If the rental application asked the voucher holder’s source of income, the voucher holder would list the voucher along with any other household income.
- ***Administration of the tenant screening*** – The landlord would be required to administer the same tenant screening process to the voucher holder as the landlord does to every other applicant. The landlord can determine whether the voucher holder could afford the tenant portion of the rent, and meets the landlord standards such as credit and criminal activity. However, the landlord may not screen out the applicant simply because the tenant is a voucher holder.
- ***Decision to rent*** – The landlord would agree to rent to the applicant who best satisfied the landlord’s lawful screening criteria.

If the voucher holder is selected, then depending on the voucher process, there may be additional process review. For example, for the Santa Clara County Housing Authority (SCCHA) Housing Choice Voucher Program, there would be further qualification requirements. The typical process would be as follows:

- ***Local housing authority inspection*** – The SCCHA would inspect to ensure it satisfied federally required habitability standards. If the landlord chose not to make the repairs requested by SCCHA, the landlord would not be able to participate in the program.
- ***Local housing authority rent reasonableness*** – Simultaneously with the inspection, the housing authority would conduct a rent reasonableness test to determine whether the rent being requested by the landlord was comparable to the rent for similar homes in the area. If the rent were to be determined incomparably higher than other rents for similar homes in the

area by the SCCHA, the landlord would have to accept the rent offered by SCCHA or not be able to participate in the program.

- ***Entering into a contract*** – When the unit satisfied the SCCHA’s standards, the landlord and local housing authority would enter into a Housing Assistance Payment contract.
- ***Tenant and local housing authority payments*** – The voucher holder would pay 32% of their gross income toward rent. The agency pays the balance of the rent directly to the landlords on behalf of the families.

IV. Public Comments and Input

Stakeholders consulted during outreach were concerned about the penalties and process of administrative citations. Landlords indicated that education is critical and that first-time offenders should not be harshly penalized. Landlords also expressed concerns regarding the potential for frequent litigation from private parties under the Proposed Ordinance. Landlords also recommended: 1) adding language that the ordinance would only require an owner to accept the application, 2) allowing for up to a one-year delay on the implementation of the ordinance to educate landlords on the change, and 3) adding language specifying that private actions by aggrieved persons to be required to be issue a “warning” before filing a lawsuit. Tenants indicated that discrimination is pervasive and warrants the need for an ordinance that prohibits discrimination based on an applicant’s source of income. Other tenants indicated a concern that landlords will continue to discriminate even with the Proposed Ordinance in place, resulting in wasted energy and expectations for voucher holders seeking housing. A summary of the public comments is included in **Attachment B**.

Participants in the public process also requested clarification on what types of evidence would be used to enforce the Proposed Ordinance. The required evidence is not covered under the Proposed Ordinance. However, generally, evidence is defined by the California Evidence Code and can include testimony, writings, material objects or anything else used to prove or disprove that a violation occurred.

V. Additional City Council Direction

The Proposed Ordinance addresses one of the items included in the direction provided by City Council over the past two years. However, there are several outstanding items from the December 11, 2018 City Council meeting which require additional work by the Housing Department regarding researching two areas of program improvements and incentives for the Santa Clara County of Housing Authority summarized in **Table 3**, including:

Table 3: Summary of Outstanding Council Direction and Housing Department's Proposed Action Plan

Council Direction	Housing Department's Proposed Action Plan
<p><i>Implement education and outreach plan</i> – 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.</p>	<p>Recommended as part of this City Council action is funding for temporary staffing that will work with SCCHA to develop and implement a public outreach plan. The SCCHA currently has monthly Section 8 coordination meetings between SCCHA, City and County, and can continue to make this issue a standing agenda item.</p>
<p><i>Convene stakeholder meetings to identify a workplan for improvements in voucher programs</i> – Direct the Housing Department to convene landlords and representative organizations, including the California Apartment Association; staff from Santa Clara County Housing Authority and the County of Santa Clara; and voucher holders and tenant representatives, to identify a workplan for continued improvements in streamlining lease-up, payment, reducing paperwork, and mitigating landlord risk in the voucher program.</p>	<p>The temporary staffing funded by the recommendation in this memorandum will convene landlord and representative organizations listed through a series of stakeholder meetings. In addition, Housing Department will lead a series of public outreach meetings with the community to target tenants and landlords of voucher holders.</p>
<p><i>Explore administrative improvements and landlord incentives</i> – Explore the following specific areas of possible administrative improvements and landlord incentives to increase the acceptance of housing vouchers: 1) speeding up the process of unit inspection required for landlords to be eligible to accept Housing Choice Vouchers (HCV); 2) speeding up the time a landlord will get the first rent check from the voucher program; and 3) simplifying paperwork, processes, or regulations that burden landlords who want to accept HCVs.</p>	<p>SCCHA is implementing program improvement initiatives to streamline the Section 8 program and reviewed the <u>SCCHA Moving to Work (MTW) 2019 Annual Plan</u> to learn about their program improvements proposed and implementation as summarized in Attachment C.</p> <p>The temporary staffing funded by the recommendation in this memorandum will coordinate with Santa Clara County Housing Authority staff and other rental subsidy partners to develop strategies on process improvements and incentives through strategic planning meetings.</p> <p>The Housing Department will continue the standing strategic meetings to address initiatives and continue collaborating with the SCCHA for additional program monitoring and implementation of incentives.</p>

VI. Proposed Staffing Plan

The temporary staffing funded by the recommendation in this memorandum is necessary to effectively implement this proposed ordinance. Responsibilities would include:

1. ***Incentives*** – Explore incentives and opportunities for collaboration with the SCCHA and stakeholders in order to increase units available for low income voucher holders. Staff will also work with organizations to identify a workplan for program improvements and possible incentives for landlord participation.
2. ***Monitoring, Counseling and Enforcement*** – Monitor rental housing advertisements and complaints by voucher holders. This staff 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 for landlord participation, and address enforcement of the ordinance.

Funds from Housing Authority Litigation Award (HALA) will fund the temporary staff. The Housing Department is also exploring different options of using existing staff, including the Rent Stabilization Program Compliance Team to further enforce this ordinance. Any adjustments necessary to effectively implement the Ordinance will be brought forward through a future budget process, as appropriate. It is important to note that, if SB 329 passes, there may be potential relief from local jurisdictions due to state remedy of its own enforcement mechanisms and staffing.

PUBLIC OUTREACH

The Housing Department conducted the following outreach meetings and a summary of the feedback received is included in **Attachment B** of this memorandum. In addition, this memorandum will be posted on the City's Council Agenda website for the August 13, 2019 Council Meeting.

EVALUATION AND FOLLOW-UP

As part of this memorandum, staff is recommending to add the new Housing Payment Equality Ordinance and appropriate funding for temporary staffing. The Housing Payment Equality Ordinance will have a second reading by the City Council two weeks following the first reading of the ordinance. The updated ordinance will be effective 30 days following the second reading of the City Council.

POLICY ALTERNATIVES

The alternative below outlines an option for City Council to consider.

Alternative #1: Do not implement the Housing Payment Equity Ordinance.

Pros: State law is currently considering an amendment to its antidiscrimination statutes under the Fair Employment and Housing Act (FEHA) to expand source of income to include rental subsidy holders. If signed into law in September 2019, SB 329 would prohibit statewide discrimination against recipients of governmental rental assistance and preempt local jurisdictions with current source of income ordinances.

Cons: If the Housing Payment Equity Ordinance and SB 329 do not pass, vouchers holders will likely continue experiencing challenges finding housing due to discriminatory practices by landlords.

Reason for not recommending: Families with vouchers who could be housed may fall into homelessness or experience housing instability as they are unable to find housing without antidiscrimination legislation.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

Pursuant to Section 7.01 of the existing regulations, the Housing Payment Equality was presented to the Housing and Community Development Commission (HCDC) at their regularly scheduled meeting on June 13, 2019. The HCDC voted (8-1) to support the following recommendation made by staff:

- Accept the draft housing payment equality ordinance including, but not limited to, staff's recommended provisions on the definition of source of income, prohibited activities, applicability, and enforcement; and
- Accept staff recommendation of funding for temporary staff to research subsidy program incentives for participation and program improvements.

This report and attachments are available online.

COST SUMMARY/IMPLICATIONS

Funding for temporary staffing to coordinate with the SCCHA and other stakeholders is recommended as part of this memorandum. The 2019-2020 cost is estimated at \$84,000. The funding source for the temporary staff would be paid from the Housing Authority Litigation Award (HALA) funds – budgeted within the Multi-Source Housing Fund – administered through the Cooperation Agreement entered between the Housing Authority of the City of San José and the City.

HALA funds may be used for low-income housing related purposes to provide, among other things, rent subsidies and counseling and advisory services to low- and moderate-income persons in connection with the rental and occupancy of housing. HALA funds may also be used to provide services in connection with low-income housing projects or programs and to pay for administrative and staff costs incurred in connection with these services. Here, the funds will be used for staffing to provide counseling and advisory services to low- and moderate-income individuals with rental subsidies in the City of San José, consistent with HALA’s allowed uses.

Staff will monitor the implementation and will evaluate ongoing staff needs as part of the 2020-2021 budget development process. If SB 329 passes, there may be potential relief from local jurisdictions due to state remedy of its own enforcement mechanisms and staffing. In addition, the Housing Department is exploring different options of using current staff members, including the Rent Stabilization Program Compliance Team to further enforce this ordinance.

BUDGET REFERENCE

Table 4 below identifies the fund and appropriations proposed to fund the actions recommended as part of this memorandum.

Table 4: Fund and Appropriations Proposed to Fund Actions

Fund #	Appn #	Appn. Name	Total Appn.	Rec. Budget Action	2019-2020 Proposed Operating Budget Page*	Last Budget Action (Date, Ord. No.)
448	0561	Housing - Personal Services	\$1,387,687	\$84,000	X-67	6/18/2019, 30286
448	8497	City Housing Authority Reserve	\$15,226,384	(\$84,000)	X-67	6/18/2019, 30286

**The 2019-2020 Proposed Operating Budget was adopted by the City Council on June 18, 2019.*

HONORABLE MAYOR AND CITY COUNCIL

August 6, 2019

Subject: Housing Payment Equality Ordinance and Rental Subsidy Program Improvements

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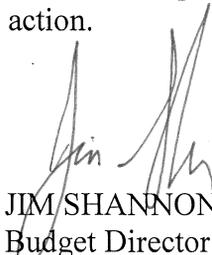
CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

JACKY MORALES-FERRAND

Director, Housing



JIM SHANNON

Budget Director

For questions, please contact Rachel VanderVeen, Deputy Director, at 408-535-8231.

Attachment A: Proposed SB 329 Legislation

Attachment B: Summary of Meetings and Public Input

Attachment C: Summary of SCCHA Incentives and Program Improvements

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Date Published: 05/17/2019 06:22 PM

AMENDED IN SENATE MAY 17, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL**No. 329**

Introduced by Senator Mitchell
(Principal coauthor: Senator Wiener)
(Principal coauthor: Assembly Member Bloom)
(Coauthors: Assembly Members Bonta, Chiu, and Grayson)

February 15, 2019

An act to amend Sections 12927 and 12955 of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

SB 329, as amended, Mitchell. Discrimination: housing: source of income.

Existing law, the [California](#) Fair Employment and Housing Act, prohibits housing discrimination, including discrimination through public or private land use practices, decisions, or authorizations, based on specified personal characteristics, including source of income. Existing law defines the term "source of income" for purposes of the provisions relating to discrimination in housing accommodations described above, to mean lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant.

This bill would instead define the term for purposes of those provisions, to mean verifiable income paid directly to a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and housing subsidies, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *It is the intent of the Legislature in enacting this act to provide a participant in a housing voucher program an opportunity to receive a thorough and fair vetting when they seek housing.*

SECTION 1. SEC. 2. Section 12927 of the Government Code is amended to read:

12927. As used in this part in connection with housing accommodations, unless a different meaning clearly appears from the context:

(a) "Affirmative actions" means any activity for the purpose of eliminating discrimination in housing accommodations because of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.

(b) "Conciliation council" means a nonprofit organization, or a city or county human relations commission, which provides education, factfinding, and mediation or conciliation services in resolution of complaints of housing discrimination.

(c) (1) "Discrimination" includes refusal to sell, rent, or lease housing accommodations; includes refusal to negotiate for the sale, rental, or lease of housing accommodations; includes representation that a housing accommodation is not available for inspection, sale, or rental when that housing accommodation is in fact so available; includes any other denial or withholding of housing accommodations; includes provision of inferior terms, conditions, privileges, facilities, or services in connection with those housing accommodations; includes harassment in connection with those housing accommodations; includes the cancellation or termination of a sale or rental agreement; includes the provision of segregated or separated housing accommodations; includes the refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the disabled person, if the modifications may be necessary to afford the disabled person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification (other than for reasonable wear and tear), and includes refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

(2) "Discrimination" does not include either of the following:

(A) Refusal to rent or lease a portion of an owner-occupied single-family house to a person as a roomer or boarder living within the household, provided that no more than one roomer or boarder is to live within the household, and the owner complies with subdivision (c) of Section 12955, which prohibits discriminatory notices, statements, and advertisements.

(B) Where the sharing of living areas in a single dwelling unit is involved, the use of words stating or tending to imply that the housing being advertised is available only to persons of one sex.

(d) "Housing accommodation" means any building, structure, or portion thereof that is occupied as, or intended for occupancy as, a residence by one or more families and any vacant land that is offered for sale or lease for the construction thereon of any building, structure, or portion thereof intended to be so occupied.

(e) "Owner" includes the lessee, sublessee, assignee, managing agent, real estate broker or salesperson, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations, and includes the state and any of its political subdivisions and any agency thereof.

(f) "Person" includes all individuals and entities that are described in Section 3602(d) of Title 42 of the United States Code, and in the definition of "owner" in subdivision (e) of this section, and all institutional third parties, including the Federal Home Loan Mortgage Corporation.

(g) "Aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice or believes that the person will be injured by a discriminatory housing practice that is about to occur.

(h) "Real estate-related transactions" include any of the following:

(1) The making or purchasing of loans or providing other financial assistance that is for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or that is secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

(3) The use of territorial underwriting requirements, for the purpose of requiring a borrower in a specific geographic area to obtain earthquake insurance, required by an institutional third party on a loan secured by residential real property.

(i) "Source of income" means lawful, verifiable income paid directly to a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f).

~~SEC. 2.~~ **SEC. 3.** Section 12955 of the Government Code is amended to read:

12955. It shall be unlawful:

(a) For the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of that person.

(b) For the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, or genetic information of any person seeking to purchase, rent, or lease any housing accommodation.

(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information or an intention to make that preference, limitation, or discrimination.

(d) For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, gender, gender identity, gender expression, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, genetic information, source of income, or on any other basis prohibited by that section. Selection preferences based on age, imposed in connection with a federally approved housing program, do not constitute age discrimination in housing.

(e) For any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.

(f) For any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.

(g) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.

(h) For any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, ancestry, disability, genetic information, source of income, familial status, or national origin.

(i) For any person or other organization or entity whose business involves real estate-related transactions to discriminate against any person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, source of income, familial status, disability, or genetic information.

(j) To deny a person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, ancestry, disability, genetic information, familial status, source of income, or national origin.

(k) To otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, source of income, disability, genetic information, or national origin.

(l) To discriminate through public or private land use practices, decisions, and authorizations because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income, or ancestry. Discrimination includes, but is not limited to, restrictive covenants, zoning laws, denials of use permits, and other actions authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void.

(m) As used in this section, "race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information," includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) To use a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together.

(o) In instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.

(p) (1) For the purposes of this section, "source of income" means lawful, verifiable income paid directly to a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f).

(2) For the purposes of this section, it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income.

Summary of Public Outreach Meetings

PUBLIC MEETINGS:

- May 22, 2019: Seven Trees Community Center
- May 23, 2019: Bascom Community Center
- May 30, 2019: San Jose City Hall Wing Rooms
- June 13, 2019: Housing and Community Development Commission (HCDC)

STAKEHOLDER MEETINGS:

- May 17, 2019: Renter's Coalition
- May 17, 2019: Bay Area Homeowners' Association
- May 23, 2019: California Apartment Association
- May 29, 2019: Santa Clara County Association of REALTORS
- May 30, 2019: Law Foundation

Source of Income – Summary of Public Comments

Seven Trees Community Meeting May 22, 2019

QUESTIONS:

1. Explain the status quo.
2. Explain the research behind the ordinance.
3. Clarify the determination on the level of evidence for a citation.
4. Consider renaming the ordinance.
5. Clarify the vetting process for Section 8.
6. Clarify the eviction process for section 8 tenant vs. tenants without a voucher.

CONCERNS:

1. No concern with the ordinance.
2. Challenge having to accept a federal/state subsidy comes with other strings attached that landlords have to follow.
3. There is a large demand for rentals and it may be a challenge to also consider voucher holders in a competitive pool.
4. There should be more mechanisms for enforcement.

Bascom Community Meeting May 23, 2019

QUESTIONS:

1. Explain the impact on security deposits.
2. Clarify how the city would investigate the citations.
3. Explain the timeline of the approval of the administrative citation fees and approval of the Ordinance.
4. Explain what is a civil action lawsuit that the city can act on.
5. Explain the reasons or need for this ordinance.
6. Clarify how landlords can be compensated for missed rents.

CONCERNS:

1. Staffing levels that are needed to do compliance.
2. Voucher programs are challenging for landlords to participate in.
3. Landlords do not want to participate in voucher programs.
4. Prohibiting the advertisement may be more challenging to find landlords who are participating in voucher programs and who are not.
5. Single family homes and duplexes should not be included.
6. Concerned that this would result in more regulations for single family homes.

7. There should be a choice for landlords to accept or decline voucher holders.
8. Find out reasons why a landlord does not accept an applicant.
9. Evictions may be more challenging with voucher holders.
10. It would be helpful to have statistics and data to show discrimination.

**City Hall Wing Rooms Community Meeting
May 31, 2019**

QUESTIONS:

1. Clarify what vouchers would be included.
2. Clarify the administration of the vouchers.
3. Explain the legal actions that may impact landlords.
4. Explain the what would be considered discrimination.
5. Explain the impact of the state bill SB 329 and what is source of income discrimination.
6. Explain the consequences for an owner if they do not participate in the voucher program.

CONCERNS:

1. Expand how Mobilehome residents would be considered.
2. Government cannot force a landlord to accept a voucher program.
3. This may result in many legal actions regarding discrimination.
4. This ordinance is just raising the expectation of tenants that they will be accepted when the landlord can still refuse it.

From: Cheryl

Sent: Sunday, March 4, 2018 3:25 AM

To: VanderVeen, Rachel; Cheryl Lubow; Morales-Ferrand, Jacky; Wright, Sara; RSP

Subject: Please add this input for Voucher ordinance

Hi,

Please add this input for Voucher Ordinance

If there is going to be a voucher Ordinance, it should pertain only to Section 8. The local vouchers should not be part of it. And, the ordinance should not apply to single family homes, condos or duplexes. It is enough of a financial burden to expect owners of 3+ units to lose a month's rent. But it would be even more difficult for owners with 1-2 units.

Thanks,
Cheryl

From: Jeff Zell

Sent: Tuesday, May 21, 2019 5:18 PM

To: Morales-Ferrand, Jacky <Jacky.Morales-Ferrand@sanjoseca.gov>; VanderVeen, Rachel <Rachel.VanderVeen@sanjoseca.gov>

Subject: RE: Draft Source of Income Ordinance Available for Review

Hi Jacky and Rachel,

I'm unable to make any of these because my daughter's HS graduation events overlap with Housing events. Here are a couple points for consideration:

Non-profit subsidies typically expire after 12 months, after which the tenants usually can't pay the rent. We inherited a couple buildings with tenants funded by Abode and Bill Wilson – all 12 tenants left after their subsidy expired for non-payment of rent; 6 left voluntarily before the UD was filed and 6 left with UDs on their records. Small sample size, but a 100% failure rate nonetheless. I'll decline to rent to any and every tenant with an expiring income source because they are not credit worthy and a proven financial risk.

Secondly, I learned recently that property insurance is underwritten differently if 15% or more of the building's income comes from subsidies, so I can't let a building surpass 15% subsidized for fear of it becoming uninsurable. I don't know why, I just know this from shopping coverage on buildings recently.

I've got no issue with S8 et al with indefinite funding sources and I've got no issue with non-profit provided deposits. I hope you do the right thing by addressing the two issues above.

Jeff

Dear Isaac Orona,

I know that you have some sort of power when it comes to housing here in the city of San Jose so I'm writing you regarding my concerns. Why have a housing voucher that is available to all home owners do not use them? And is it a coincidence that the families who have these vouchers get denied are people of color? The rise in rent needs to be solved with a different solution. Not a piece of paper.

Respectfully yours,
Andrew Duran



Isaac Orona
Development Officer
City of San Jose
200 East Santa Clara St. 12th
San Jose, CA 95113

From: Jennie Bader
Sent: Monday, July 01, 2019 4:33 PM
To: Marcus, Adam <adam.marcus@sanjoseca.gov>
Subject: Fwd: FW: Source of Income

Hi Adam

I wasn't able to attend the second community meeting for source of income awhile back, I am forwarding some feedback and thoughts..

While I am grateful that the city is taking action to prevent landlords from discriminating against those who want to rent and have a housing voucher, perhaps fining landlords who publicize "no vouchers" will not solve the core issue.

The assumption that they post "no vouchers" is due to avoiding the risk of housing that bad apple tenant with a housing voucher cost them unnecessary expenses. Expenses for repairing damages, bed bug treatments or eviction and legal costs.

In the meeting I attended, a participant gave a great analogy of eating at the same restaurant and coming home sick. While a solution may be don't go to that restaurant anymore. But the solution is to fix the bad food that makes them sick.

For housing, I will propose three solutions:

- 1) an ordinance that 1-2% of an apartment complex rent to a voucher holder. They are afraid of accepting vouchers will force them to rent the entire complex to all voucher holders. Plus some voucher holders don't want to live around all population of voucher holders too. This would not apply to single private homeowners.
- 2) Implement a new "landlord" insurance where they pay a small fee. And when the tenant does damage, have bed bugs, eviction/legal issues, they are covered by this landlord insurance policy.
- 3) implement a process or provide a service for being able to hot box your belongings when a person has infestation. Especially prior to moving in from being homeless.

Thank you again for initiating the source of income ordinance. Here are some additional feedback and solutions for solving this problem. I welcome you to call me or forward this email to those who can advocate for such changes.

--

Best,

Jennie S. Bader, PMP

Santa Clara County Housing Authority Moving to Work (MTW) 2019 Annual Plan
Summary of Program Improvements and Incentives

A. Santa Clara County Housing Authority Program Improvements

According to the SCCHA Moving to Work (MTW) 2019 Annual Plan, the Santa Clara County Housing Authority Program implemented the following changes and proposed improvements:

- A. *Reduced Frequency of Tenant Reexaminations (Implemented):*** Implemented in 2009, this improvement reduced the frequency of participant reexaminations in the voucher program. Participants with a fixed income are reexamined every three years and participants with a non-fixed income are reexamined every two years. In 2015, SCCHA added an amendment to this activity to include its four public housing units under the new reexamination schedule. By including its public housing units under the modified reexamination schedule, SCCHA continues to recognize administrative streamlining and labor savings for both its Section 8 and 9 programs.
- B. *Expediting the Initial Eligibility Income Verification Process (Implemented):*** Implemented in 2009, this improvement extends the timeframe of the application documents window from 60 days to 120 days. Extending the documentation timeframe continues to provide administrative relief, both to applicants and to SCCHA. Applicants do not need to continually provide updated documentation if the previously provided information becomes too old (dated older than 60 days) before voucher issuance. SCCHA continues to utilize this activity.
- C. *30-Day Referral Process for Project-Based Vacancies (Implemented):*** Implemented in 2010, this referral process allows landlords to directly refer applicants after 30 days of unsuccessful attempts to fill the Project-Based Voucher (PBV) unit using referrals from the SCCHA waiting list. This change reduced the vacancy time for landlords and the resultant loss in money thus ensuring the continuation of the PBV contract and the affordability of the units for low income households.
- D. *Simplify Requirements regarding Third-Party Inspections and Rent Services (Implemented):*** This change was implemented in 2011 in order to waive the regulatory requirement in which HUD must approve a designated, qualified independent agency to conduct Housing Quality Standards (HQS) inspection and rent reasonableness services for SCCHA owned units. SCCHA waived the second part of the HUD regulation that requires the independent agency to supply copies of each inspection report and rent reasonableness determination to the HUD field office. SCCHA continues to realize the ongoing benefits associated with reduced costs and administrative streamlining related to this activity.
- E. *New Web-Based Tool for Waitlist (Implemented):*** SCCHA's new web-based tool implemented in 2019 is designed to simplify client-agency interactions and improve overall efficiency; explore how to better serve clients through Section 8 waitlist and IT

system innovations. The recently launched a tenant app to simplify the waitlist, the first of its kind in the country, to simplify clients' day to day interactions with the agency, while improving the efficiency of the agency.

- F. *Streamline the Lease-Up Process (Proposed):*** SCCHA proposes in 2019 to alleviate the delays associated with the processing and completion of the lease-up process. Specifically, SCCHA proposes waiving the required use of standard form HUD-52517 and the HUD-required language that must be included in Section 8 leases. This proposed activity would increase available housing choices to participants by eliminating duplicative and redundant requirements in the lease-up process, which has been identified in surveys as a key factor which discourages landlords from renting to Section 8 tenants. SCCHA anticipates that this activity will improve customer service and communication between SCCHA and its participating landlords and reduce the time necessary for the completion of the RFTA and lease up processes. This will allow for an increase in housing choices for Section 8 tenants by allowing for the retention of current landlords as well as potentially attracting new landlords to the program.

B. Santa Clara County Housing Authority Program Incentives

According to the SCCHA Moving to Work (MTW) 2019 Annual Plan, SCCHA has introduced program and process improvements in recent years to improve landlord participation and satisfaction with the Housing Choice Voucher program, including:

- A. *Setting The Payment Standards Above 110 Percent of HUD Fair Market Rent (Implemented):*** This change implemented in 2017 provided the flexibility to set SCCHA payment standards higher than 110 percent of the Fair Market Rent (FMR), if necessary, without HUD approval. This activity gave SCCHA participants the ability to be more competitive in the high priced and volatile Santa Clara County rental market. This activity is intended to increase the probability of participants securing a rental unit in a tight, high-cost rental market.
- B. *Re-Proposed Activity 2017: Expand Landlord Initiatives: Bonus Payment (Proposed):*** This activity was originally implemented in 2017; it created as a means to encourage owners to rent their vacant units to HCV voucher holders. SCCHA is re-proposing this activity in 2019 to include bonus payments for new owners who agree to rent to HCV voucher holders. The bonus payment amount will range between \$500 and \$2,500. This is an amount that was determined to be reasonable after evaluating the program-wide contract rent range. Landlords received a one-time bonus payment equal to the amount of the unit's one month's rent, not to exceed \$2,500.
- C. *Provide a Graduation Bonus (Proposed):*** This activity proposed in 2019 will modify the regulation that the HAP contract automatically terminates 180 days after the last HAP payment to include families whose HAP amount is less than \$100 per month, shorten the time period before automatic termination to 60 days, and provide a graduation bonus payment to affected families. The graduation bonus paid by this activity is intended to ease the transition of formerly-assisted families into the unsubsidized housing market.

ATTACHMENT C

Therefore, for each family who leaves the program because of this activity, a new family can receive the benefit of the voucher turnover.