



COMMUNITY DEVELOPMENT AGENCY

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October 25, 2016

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SUBJECT: Fair Housing Ordinance to establish source of income protections and increase affordable housing options.

Building and Safety
Environmental Health Services
Planning
Environmental Review
Housing
Sustainability
Code Enforcement
GIS
Federal Grants

Dear Board Members:

RECOMMENDATION: Staff recommends that your Board conduct a first reading and schedule a merit hearing for November 8, 2016 to consider adopting a Fair Housing Ordinance to establish source of income protections and increase affordable housing options (Attachment 1).

SUMMARY: The proposed ordinance is intended to eliminate limitations in the provision of rental housing for families and veterans who receive third party rental assistance. Source of income protection prevents landlords from advertising or stating a preference for certain sources of income, from charging a higher deposit based on a person's source of income, and from treating a person differently based on their source of income. It also establishes that an income requirement can only be applied to the tenant's portion of the rent if they receive a third party subsidy. These protections would apply to all housing in unincorporated Marin except a home in which the landlord lives and rents out only one room.

www.marincounty.org/cda

Current state law prohibits housing discrimination based on a person's source of income (California Government Code §12921); however "source of income" is defined the as "lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this section, a landlord is not considered a representative of a tenant." (§12955(p)(1).)

Case law has established that California's source of income discrimination law does not protect individuals or families with third party rental subsidies because rental payments do not qualify as a source of income when paid directly to the landlord. State or federal laws do not, however, preempt municipalities from adopting a distinct Fair Housing Ordinance that recognizes third-party housing subsidies such as Housing Choice ("Section 8"), Veterans Affairs Supportive Housing (VASH), Housing for People with AIDS (HOPWA), and Shelter Plus Care vouchers as a "source of

income,” thereby extending protections to recipients of rental subsidies. Since 1998, fair housing ordinances have been established in California cities, including San Francisco, East Palo Alto, and Santa Monica.

BACKGROUND: A comprehensive set of policy options to address the County’s affordable housing needs was considered by your Board over the course of four public workshops and hearings that took place between October 2015 and February 2016. At the February 2016 workshop, your Board provided direction to staff as to which policy options should be prioritized (Attachment 2). An ordinance to prohibit rental housing discrimination based on a tenant’s source of income, including income from Housing Choice (“Section 8”) vouchers and other third-party rental subsidies, was identified as a priority and scheduled for consideration between October 2016 and February 2017.

The impetus for third party rental subsidy programs was borne out of America’s first public housing desegregation lawsuit, *Gastreaux v. Chicago Housing Authority*,¹ which found that by concentrating more than 10,000 public housing units in isolated African-American neighborhoods, the Chicago Housing Authority and the U.S. Department of Housing and Urban Development (HUD) violated both the U.S. Constitution, which guarantees all citizens equal protection of the laws, and the 1964 Civil Rights Act, which outlaws racial discrimination in programs that receive federal funding. The resulting program, known as Section 8, led to a template for HUD and local housing authorities to issue vouchers which can be used in the private rental market and pay a portion of a family’s rent without concentrations of poverty. The vouchers are intended to assist families, veterans, the elderly, and people with disabilities to move to areas of opportunity, with access to better housing, schools and jobs.

The County’s 2010 Analysis of Impediments to Fair Housing Choice (AI) found that substantial impediments to housing choice exist across the rental, sale, and lending markets throughout Marin County. For example, Hispanic, Asian, and particularly Black households are not moving into Marin County in appreciable numbers in part because Marin is viewed as an unwelcoming place for racial minorities; and those minorities who choose to live in Marin may face differential treatment that limits housing choices. Families with children also experience discrimination and are limited in their housing choices that have unit sizes that can accommodate families. People with disabilities face barriers ranging from housing providers’ unwillingness to rent to tenants in need of reasonable accommodations to physically inaccessible housing.

Section 8 vouchers are seen as a tool for promoting integration². However, the advantages of vouchers depend on the ability of voucher recipients to locate a

¹ *Gastreaux v. Chicago Housing Authority*, 296 F. Supp. 907 (N.D. Ill. 1969)

² Freeman, L. (2011). *The Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes*. U.S. Department of Housing and Urban Development.

landlord who will accept the voucher. Some landlords wish to avoid the administrative burden associated with the voucher program. Other landlords perceive voucher recipients to be undesirable tenants and/or fear their other tenants would object to voucher recipients as neighbors. A national survey conducted by HUD found that the “success rate” for voucher holders, or the amount of time they were able to find suitable housing, increased by twelve percent (12%) in the parts of the country where source of income protection is in effect. The study showed that source of income protection laws gave voucher holders a “significantly higher probability of success” of finding a place to live³.

Between January 1, 2014 and August 31, 2016, Marin Housing Authority (“Marin Housing”) issued 2,194 rental subsidies to low-income Marin families in the form of Section 8 vouchers. Nearly half (1,063) of those families were unable to find housing accommodation to accept their vouchers in the county and lost their vouchers. Two hundred thirty-nine (239) families transferred their voucher, and the associated federal funding, out of Marin.

Rental listings advertising “no Section 8” are a common practice in the County. During the first two weeks of September 2016, staff surveyed advertisements on Craigslist (Attachment 3) and identified advertisements for twenty-six unique home listings that specifically denied applicants using Section 8 as a source of income access to those homes. Of these rentals, seventy-seven percent (77%) would have met 2016 Payment Standards established by Marin Housing, and ninety-two percent (92%) would meet the 2017 Payment Standards (Table 1). If the proposed ordinance were in place, these homes may have been available to a family with a voucher. While the proposed Ordinance could therefore lower a barrier to housing opportunities, it would not prevent or hinder property owners and landlords from screening renters and retaining freedom of choice based on other factors such as total income, credit score, rental history, references, etc. The Ordinance would also allow property owners to take advantage of the incentives recently offered for the first time through Marin Housing’s Landlord Partnership Program.

In July 2016, your Board allocated \$450,000 towards landlord incentives to preserve affordable rentals for low-income households in Marin. The Landlord Partnership Program aims to make landlord participation in the Section 8 program more attractive, feasible and streamlined. The program can cover a range of potential costs to provide coverage for potential financial risks that may be associated with the Section 8 program, including an increased or double security deposit, a loss mitigation pool for potential damage or non-payment of rent that exceeds a security deposit, and vacancy loss coverage that can provide a month’s rent payment during vacancy. The Landlord Partnership program should help address landlord concerns in renting to low income voucher holders.

³ Finkel, M., and Buron, L. (2001). *Study on Section 8 Voucher Success Rates: Volume I Quantitative Study of Success Rates in Metropolitan Areas*. U.S. Department of Housing and Urban Development.

Table 1. Marin Housing’s Payment Standards

	Studio	1 BR	2 BR	3 BR	4 BR
2016	\$1,310	\$1,995	\$2,517	\$2,922	\$3,533
2017	\$1,724	\$2,170	\$2,716	\$3,534	\$4,346

CONCLUSION: Prohibiting rental property owners from excluding families and veterans based solely upon third party rental subsidies would help remove a barrier to fair housing. Together with the incentives offered through the Landlord Partnership Program, the Fair Housing Ordinance could increase affordable housing opportunities for subsidized renters and would address a loophole in State law that could limit those opportunities.

REVIEWED BY:

<input type="checkbox"/> Auditor Controller	<input checked="" type="checkbox"/> N/A
<input checked="" type="checkbox"/> County Counsel	<input type="checkbox"/> N/A
<input type="checkbox"/> Human Resources	<input checked="" type="checkbox"/> N/A

Respectfully Submitted,



Leelee Thomas
Principal Planner



Brian C. Crawford
Director

Attachments:

1. Fair Housing Ordinance to establish source of income protections and increase affordable housing options.
2. Board approved affordable housing policy options, February 9, 2016.
3. Craigslist listings—“No Section 8.”

This Board letter and all attachments are available in English, Spanish and Vietnamese online at the Community Development Agency’s [Affordable Housing Webpage](#).

A full reference copy is available for public review at the Board of Supervisors office, 3501 Civic Center Drive, Suite 329 (8:00 am to 5:00 pm, Monday through Friday) and at the Community Development Agency, Planning Division, 3501 Civic Center Drive, Suite 308 (8:00 am to 4:00 pm, Monday through Thursday, closed Fridays).