



COMMUNITY DEVELOPMENT AGENCY

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SUBJECT: Proposed Ordinance to amend Chapter 5.53 of the Marin County Code—Income-Based Rental Housing Discrimination to eliminate an exception for owner-occupied structures.

Dear Board Members:

RECOMMENDATION: Consistent with the Board's prior direction, Staff recommends that your Board conduct a first reading and consider an amendment to remove an owner-occupancy exception from Marin County Code Chapter 5.53—the County's Fair Housing Ordinance providing source of income protections for recipients of third-party rental assistance (Attachment 1).

SUMMARY: On November 8, 2016, your Board held a merit hearing and adopted a Fair Housing Ordinance to remove limitations in the provision of rental housing for families and veterans who receive third-party rental assistance (Attachment 2). At that time, your Board directed staff to return at a future date to consider the herein contained amendments to remove an exception for owner-occupied structures with less than three dwelling units and for housing accommodations wherein an owner and tenant keep in common either a bathroom or kitchen facility (§ 5.53.010.C.1).

The elimination of this exception would simplify the process for understanding and determining Ordinance applicability. Furthermore, it would support an original intent of the Ordinance to inhibit a discriminatory rental environment by preventing property owners from disseminating advertising materials expressing preference based on a person's source of income.

BACKGROUND: The existing Fair Housing Ordinance contains an exception for owner-occupied dwellings or owner-occupied structures containing three or fewer units. Precedent for an owner occupancy exemption predates the 1968 federal Fair Housing Act (FHA), and was included in the FHA as a compromise between the arguments for a landlord's First Amendment freedom of association and their obligations as proprietors participating in the rental housing market to comply with

those market regulations.¹ A property owner is not obliged to rent their property, but if they elect to do so, they are obligated to comply with fair housing and other market regulations.

Your Board has signaled its support of the development of accessory dwelling units ("ADUs" or "second units"), junior accessory dwelling units ("JADUs" or "junior units") and room rentals as a strategy of addressing the ongoing housing affordability crisis. These units would likely be exempt from this Fair Housing Ordinance if the exception provided in § 5.53.010.C.1 is maintained.

CONCLUSION:

The proposed amendment furthers the County's Fair Housing goals. No State or Federal law preempts the County's ability to eliminate this exemption.

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,

Debbi La Rue
Planner

Brian C. Crawford
Director

Attachments:

1. Ordinance to amend Chapter 5.53 of the Marin County Code.
2. Staff report and attachments from Fair Housing Ordinance merit hearing, November 8, 2016.

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).

¹ Walsh, J. D. (1999). Reaching Mrs. Murphy: A call for repeal of the Mrs. Murphy exemption to the Fair Housing Act. *Harvard Civil Rights Law Review*, 34, 605-634.