



TOWN OF FAIRFAX

STAFF REPORT

March 7, 2018

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager ^{GT}

SUBJECT: Introduce and read by title only an Ordinance Adding Chapter 5.52 Entitled "Income-Based Rental Housing Discrimination" to the Fairfax Municipal Code, Title 5, to Increase Affordable Housing Opportunities in the Town which would prohibit landlords from discriminating against prospective renters solely on the basis that a portion of their rent was guaranteed by a third party subsidy such as a Section 8 housing voucher; CEQA Categorical Exemption Class 8, CEQA Guidelines Sections 15060(c)(2), 15061

RECOMMENDATION

Introduce and read by title only an Ordinance Adding Chapter 5.52 Entitled "Income-Based Rental Housing Discrimination" to the Fairfax Municipal Code, Title 5, to Increase Affordable Housing Opportunities in the Town.

BACKGROUND

At the request of Councilmember Coler, the Council initially discussed the concept of adopting a Fair Housing ordinance similar to the County's at its June 7, 2017 meeting. The County of Marin's ordinance prohibits landlords from discriminating against prospective renters solely on the basis that a portion of their rent is guaranteed by a third-party subsidy (e.g., Section 8 housing voucher).

While supportive of the concept, the Council requested staff to report back with more information about potential limitations, statistics on how similar ordinances have worked, implementation by other entities, and the status of current case law. At the Council's October 2017 meeting to further discuss the matter, Leelee Thomas from Marin County was available to answer questions. The representative from the Marin Housing Authority (MHA) had to leave before the item was discussed by the Council. As a follow up to the meeting, MHA reports that it currently partners with 1,258 landlords with 2,152 leased units under the Section 8 program. Of the 2,152 units, 74 of those rentals are in the Town of Fairfax.

Based on the Council's direction from its October 2017 meeting, legal counsel prepared an ordinance with some minor clarifications relative to the County of Marin's. Specifically, legal counsel worked with Vice Mayor Lacques to develop the proposed ordinance for consideration at the November 2017 meeting.

DISCUSSION

At its November 2017 meeting, the Council discussed the proposed ordinance. The ordinance was tailored to not make violations a criminal offense, eliminated the provision for three times the amount of special and general damages, and allowed landlords to decide if they want to rent to a group of tenants. After much discussion, the Council directed staff to revise the proposed ordinance to be more consistent with the County's ordinance.

Specifically, legal counsel worked with County Counsel's office to revise the ordinance. The changes we incorporated were to re-insert the criminal penalties, a slightly modified version of the

aggregate income provision, and an exemption included in the County's ordinance. The exemption provides that landlords do not have to comply with the housing assistance discrimination provisions or the aggregate income protections in an owner-occupied unit that shares bathroom or kitchen facilities with the prospective tenant. County Counsel has indicated their support with the revisions incorporated into the attached ordinance.

However, it should be noted that the Council did not conclude its policy discussions regarding the aggregate income provision.

FISCAL IMPACT

None

ATTACHMENT

Ordinance

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADDING CHAPTER 5.52 ENTITLED “INCOME-BASED RENTAL HOUSING DISCRIMINATION”
TO THE FAIRFAX MUNICIPAL CODE, TITLE 5,
TO INCREASE AFFORDABLE HOUSING OPPORTUNITIES IN THE TOWN**

WHEREAS, in the State of California it is unlawful to restrict housing choice on the basis of race, color, disability, religion, sex, familial status, national origin, sexual orientation, marital status, ancestry, age, and source of income; and

WHEREAS, low income residents throughout Marin County generally, and within the Town of Fairfax, are being forced out due to high costs of rental housing and low vacancy rates; and

WHEREAS, the Marin Housing Authority, which administers the housing voucher programs in Marin County including the Housing Choice Voucher Program, also known as “Section 8,” the Veterans Affairs Supportive Housing Voucher Program, the Housing for People with Aids, and the Shelter Plus Care programs, reports a shortage of landlords participating in these programs; and

WHEREAS, the refusal to accept Section 8 Housing vouchers or other third party rental assistance programs significantly reduces the stock of rental housing that is available to participants in such programs; and

WHEREAS, California Government Code §12921 prohibits housing discrimination based on source of income as defined by §12955(p)(1), which does not protect Housing Choice voucher holders because the financial payments are not paid to the tenant as established by case law (*SABI v. Sterling*, 183 Cal.App.4th 916 (2010)); and

WHEREAS, the Town of Fairfax is committed to providing and preserving affordable housing for all income levels; and

WHEREAS, the Town of Fairfax adopted Goal H-1 in the 2015-2023 Housing Element Update to provide housing opportunities for a range of household types and incomes, including extremely low, very low, low, moderate, and above moderate incomes— as well as for homeless families and individuals; and

WHEREAS, California law and federal law further require the Town to identify impediments to providing affordable housing and to develop strategies for removing those impediments; and

WHEREAS, in order to fulfill its commitment to increase affordable housing opportunities for all income levels, it is necessary to prohibit housing discrimination based on a source of income that is a rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Chapter 5.52 entitled "Income-Based Rental Housing Discrimination" is hereby added to Title 5 "Business Taxes, Licenses, and Regulations" of the Fairfax Municipal Code, as contained in the attached Exhibit A of this Ordinance.

Section 3. Effective Date and Posting. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women's Club.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the ___ day of _____, 2018 and duly adopted at the next regular meeting of the Town Council on the ___ day of _____, 2018, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

PETER LACQUES, MAYOR

ATTEST:

Michele Gardner, Town Clerk

Exhibit A attached

CHAPTER 5.52 - INCOME-BASED RENTAL HOUSING DISCRIMINATION

Sections

- 5.52.010 Purpose
- 5.52.020 Income-Based Rental Housing Discrimination
- 5.52.030 Civil injunctive relief
- 5.52.040 Civil liability
- 5.52.050 Criminal penalty
- 5.52.060 Definitions

5.52.010 – Purpose

The purpose of this chapter is to increase affordable housing opportunities by prohibiting discrimination on the basis of tenants' participation in third party rental assistance programs.

5.52.020 – Income-Based Rental Housing Discrimination

- A. Prohibited Activity. It is unlawful for any person to do any of the following related to the rental of real property for residential use as wholly or partially based on source of income, as defined herein:
 - 1. To interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property related 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;
 - 2. To include in the terms or conditions of a transaction in real property any clause, condition or restriction;
 - 3. To refuse or restrict facilities, services, repairs or improvements for any tenant or lessee;
 - 4. 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, which unlawfully indicates preference, limitation or discrimination based on source of income.
- B. Prohibited Economic Discrimination. It is unlawful for any person to use a financial or income standard for the rental of housing that does either of the following:
 - 1. Fails to account for any rental payments or portions of rental payments that will be made by other individuals or organizations, including by a rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program, on the same basis as rental payments to be made directly by the tenant or prospective tenant;

2. Fails to account for the aggregate income of persons residing together or proposing to reside together or the aggregate income of tenants or prospective tenants and their cosigners or proposed cosigners.

C. Exceptions.

1. Nothing in this chapter shall be construed to apply to the rental or leasing of any housing unit in which the owner or any member of his/her family occupies one of the living units and it is necessary for the owner to use either a bathroom or kitchen facility common with the prospective tenant(s).
2. Nothing in this chapter shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

5.52.030 - Civil injunctive relief

Any aggrieved person may enforce the provisions of this chapter by means of a civil injunctive action. Any person who commits, or proposes to commit, an act in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this section may be brought by any aggrieved person, by county counsel, the district attorney, the town attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

5.52.040 - Civil liability

Any person who violates any of the provisions of this chapter or who aids in the violation of any provisions of this chapter is liable for special and general damages, or up to three times the amount of one month's rent that the landlord charges for the unit in question. The court may award in addition thereto not less than two hundred dollars (\$200.00) but not more than four hundred dollars (\$400.00), together with attorney's fees, costs of action, and punitive damages. Civil actions filed pursuant to this section must be filed within one year of the alleged discriminatory acts.

5.52.050 – Criminal penalty

Any person who violates any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period not exceeding six months, or both.

5.52.060 - Definitions

- A. The term "source of income" as used in this chapter means all payments from a rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program, provided such funds are not paid directly to the tenant.
- B. The word "person" as used in this chapter means any individual, firm, corporation, or other organization or group of persons however organized.