




TOWN OF FAIRFAX

STAFF REPORT

October 4, 2017

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager 

SUBJECT: Discuss the concept of a Fair Housing Ordinance

RECOMMENDATION

Discuss the concept of adopting an ordinance similar to the attached Fair Housing ordinance adopted by the County of Marin.

DISCUSSION

The Council initially discussed the concept of adopting a Fair Housing ordinance similar to the County's at its June 7, 2017 meeting. 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. It was suggested that a discussion with a County representative would be beneficial.

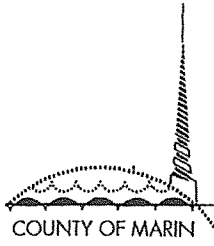
A representative from Marin County and Marin County Housing will be at this meeting to discuss the County's ordinance and effectiveness of similar ordinances in other communities. The County adopted the attached ordinance to prohibit landlords from discriminating against prospective renters solely on the basis that a portion of their rent was guaranteed by a third party subsidy such as a Section 8 housing voucher.

FISCAL IMPACT

n/a

ATTACHMENT

Letter and Fair Housing Ordinance adopted by the County of Marin



COMMUNITY DEVELOPMENT AGENCY

April 13, 2017

Brian C. Crawford
DIRECTOR

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Mr. Garret Toy
City of Fairfax City Manager
142 Bolinas Road
Fairfax, CA 94930

Dear Mr. Toy:

In November 2016, the Board of Supervisors adopted a Fair Housing Ordinance intended to eliminate limitations in the provision of rental housing merely because a family, veteran or other renter receives third party rental assistance through the Housing Choice (Section 8), Veterans Affairs Supportive Housing, Housing for People with AIDS, and Shelter Plus Care programs. In light of the opportunity to expand these protections, I am writing to suggest the City of Fairfax considers joining the County in adopting a fair housing ordinance that creates a level playing field for all renters throughout Marin.

As you may know, 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. With the Board's adoption of the Ordinance, these protections currently apply to housing in unincorporated areas of Marin.

The Fair Housing Ordinance acknowledges that housing vouchers are an important tool providing affordable housing for over 2,000 households with Section 8 vouchers in Marin. However, the benefits of the voucher programs depend on the ability of voucher recipients to locate a landlord willing to accept a voucher. The Ordinance establishes parity for prospective renters with vouchers by preventing landlords from categorically rejecting them solely on the basis that a portion of their rent is guaranteed by a third party subsidy. It does not, however, hinder or prevent landlords and property owners from screening and rejecting prospective tenants based on legitimate factors, such as total income, credit history, rental history, and references.

The County's Fair Housing Ordinance followed the Board of Supervisors decision in July 2016 to allocate \$450,000 for a new countywide landlord incentives program available throughout Marin. The Landlord Partnership Program aims to make landlord participation in the Section 8 program more attractive, feasible and streamlined and the funds are available within your jurisdiction. The program should help address landlord concerns in renting to voucher holders by covering a range of potential costs based on perceived risks or prior experience that may be associated with the Section 8 program. The program provides landlord funding for increased or double security deposits, 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.

Enclosed please find a copy of the Fair Housing Ordinance. We would be happy to provide your staff with assistance if you are interested in exploring a similar ordinance. Please contact Leelee Thomas, Planning Manager at lthomas@marincounty.org or 415.473.6697.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian C. Crawford". The signature is fluid and cursive, with a large initial "B" and "C".

Brian C. Crawford
Director
Marin County Community Development Agency

Enc. Fair Housing Ordinance

ORDINANCE NO. 3667
AN ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS
AMENDING SECTION 5.53.010 OF THE MARIN COUNTY CODE TITLE 5

The Board of Supervisors of the County of Marin hereby ordains as follows:

SECTION I: FINDINGS

WHEREAS, in Marin County, 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, the County of Marin is committed to providing and preserving fair and affordable housing for all income levels; and

WHEREAS, the County of Marin wants to increase the availability of housing to all income levels and eliminate any limitations in the provision of housing, including discrimination based on a person's source of income; and

WHEREAS, the elimination of an exception for owner-occupied structures will expand housing options without creating an undue burden for property owners;

WHEREAS, the Marin Housing Authority, which administers the housing voucher programs including the Housing Choice Voucher Program, also known as "Section 8," and the Veterans Affairs Supportive Housing Voucher Program reports a shortage of landlords participating in the program; and

WHEREAS, this shortage may reflect discrimination against tenants with Housing vouchers; and

WHEREAS, discrimination against Housing voucher holders significantly reduces the stock of rental housing that is available to them; 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 as established by case law (*SABI v. Sterling*, 183 Cal.App.4th 916 (2010)); and

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

WHEREAS, in order to fulfill its commitment to fair housing, to increase affordable housing opportunities, and to fulfill its legal obligations it is necessary to prohibit housing discrimination based on source of income.

SECTION II: ACTION

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors adopts the amendments to Section 5.53.010 of Marin County Code Title 5 (Business Regulations and Licenses) contained in Exhibit A of this Ordinance.

SECTION III: EFFECTIVE DATE

This Ordinance shall be and is hereby declared to be in full force and effect as of thirty (30) days from and after the date of its passage, and shall be published once before the expiration date of fifteen (15) days after its passage, with the names of the Supervisors voting for and against the same in the Marin Independent Journal, a newspaper of general circulation in Marin County.

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this 21st day of March, 2017 by the following vote:

AYES: SUPERVISORS Dennis Rodoni, Katie Rice, Damon Connolly, Kathrin Sears,
Judy Arnold
NOES: NONE
ABSENT: NONE



PRESIDENT, BOARD OF SUPERVISORS

ATTEST:



CLERK

ORDINANCE NO. 3667

EXHIBIT A

Proposed Amendments to Marin County Code Chapter 5.53

CHAPTER 5.53—INCOME-BASED RENTAL HOUSING DISCRIMINATION

Sections

5.53.010	Housing
5.53.020	Civil injunctive relief
5.53.030	Civil liability
5.53.040	Criminal penalty
5.53.050	Definition

5.53.010 - Housing.

- A. Prohibited Activity. It is unlawful for any person to do any of the following as wholly or partially based on source of income:
1. 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;
 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.
 5. For purposes of this subsection, "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.
- 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 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 an aggregate income of tenants or prospective tenants and their cosigners or proposed cosigners on the same basis as the aggregate income of married persons residing together or proposing to reside together.

C. Exceptions.

1. Nothing in this chapter shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

5.53.020 - 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, or by any person or entity which will fairly and adequately represent the interests of the protected class.

5.53.030 - 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, and the court must award to the individual whose rights are violated, three times the amount of special and general damages, or, in the case of unlawful discrimination in the rental of a unit, 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.

5.53.040 - 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.

5.53.050 – Definition

The word "person" as used in this chapter means any individual, firm, corporation, or other organization or group of persons however organized.