

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: DAVID GOUIN, DIRECTOR
DEPARTMENT OF HOUSING AND COMMUNITY SERVICES
SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF SANTA ROSA
AMENDING THE SANTA ROSA CITY CODE ADDING A NEW
CHAPTER 10-46, HOUSING ANTI-DISCRIMINATION CODE

AGENDA ACTION: ORDINANCE

RECOMMENDATION

It is recommended by the Department of Housing and Community Services that the City Council consider introducing an ordinance adding Chapter 10-46 to the Santa Rosa City Code prohibiting rental housing discrimination based on source of income, including Section 8 Housing Choice Vouchers and other rent subsidies. Alternatively, the City Council could allow newly proposed State legislation (Senate Bill 329) to apply, which provides similar source of income protections for tenants.

EXECUTIVE SUMMARY

The Council of the City of Santa Rosa adopted a comprehensive housing strategy as part of its Tier 1 housing goals. A component of the housing strategy is to adopt a local ordinance that prohibits rental housing discrimination against tenants using Section 8 Housing Choice Vouchers and other forms of rental assistance.

The Department of Housing and Community Services presented a draft ordinance to Council on August 13, 2019. Council requested additional outreach efforts to hear the concerns of rental property owners and tenants using housing subsidies before bringing the draft ordinance back for consideration on September 24, 2019.

The California State Legislature approved Senate Bill 329, introduced by Senator Holly Mitchell (D-Los Angeles), on September 11, 2019. The Governor has until October 13, 2019 to sign the bill into law. As discussed below SB 329 is very similar to the proposed ordinance, but there are a few differences. The Council can introduce Chapter 10-46 or, alternatively, simply allow SB329 to apply, which if signed, would become effective January 1, 2020.

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BACKGROUND

Santa Rosa is experiencing a housing crisis exacerbated by the 2017 wildfire disaster, with a severe shortage of available and affordable housing. Council identified housing as a Tier 1 priority and planned a comprehensive strategy to address the housing crisis, including sixteen specific deliverables to be completed between June 30, 2019, and the year 2023. Council has developed concurrent strategies addressing homelessness in Santa Rosa, also a Tier 1 priority. The steps outlined in the comprehensive housing strategy were developed during the Council and Executive Staff annual goal-setting workshop and were adopted by City Council on May 7, 2019.

The Santa Rosa Housing Authority (SRHA) administers the Section 8 Housing Choice Voucher program within the Department of Housing and Community Services and has aligned its local policies to support the Council's Tier 1 goals by setting aside Housing Choice Vouchers for persons experiencing homelessness and for survivors of the October 2017 wildfires. The Housing Choice Voucher (HCV) program is the largest rental housing program in the United States, serving over 2.2 million households. Under the HCV program, Housing Authorities use federal dollars to help participants pay their rent in privately owned housing. SRHA has 1,898 vouchers under contract with HUD including 414 vouchers dedicated to homeless veterans under the HUD-Veterans Affairs Supportive Housing (HUD-VASH) program.

The HCV program was first enacted in 1974 and has proven to be an efficient, cost-effective alternative to government-owned affordable housing with better outcomes for participating families who are able, in theory, to choose their housing located outside areas of concentrated poverty that meets their individual needs. In practice, voucher holders may find that their housing opportunities are still limited despite having the financial resource of voucher assistance since there is no requirement for housing providers to participate in the HCV program.

Eleven states and more than 50 local governments have enacted source of income protection laws that prohibit landlords from refusing to rent to voucher holders solely because they will use a voucher to help pay the rent. A December 2018 report published by the Center for Budget and Policy Priorities, a research institute that analyzes the federal budget and federal budget decisions that affect low-income families, indicated that source of income protection laws are associated with substantial reductions in the number of landlords that refuse to accept vouchers and that these protections increase the voucher success rate. The voucher success rate is defined as the proportion of families issued a voucher who succeed in leasing a unit within the program timeframe. In areas where these protections exist, the success rate for voucher holders has been estimated to increase between 5-12%. SRHA's current success rate is 61%, down from 74% in 2018 and slightly higher than a 2017 low of 59%. Many factors contribute to the voucher success rate, but the number of landlords willing to accept vouchers has been identified as a likely major contributor to this indicator.

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SRHA voucher holders searching for housing have reported challenges in finding landlords who are willing to accept the voucher. A review of local rental advertisements on Craigslist and Zillow revealed listings that explicitly stated vouchers would not be accepted. Such policies impede the efforts of SRHA and Council to address the housing crisis by narrowing the pool of rentals available to families who are participating in programs designed to promote housing affordability and opportunity.

As of June 2019, sixteen California jurisdictions had passed source of income discrimination ordinances, including several North Bay cities. The purpose of these measures is to give tenants using vouchers or other third-party rental assistance equal access to the rental application process. If approved, Santa Rosa's ordinance will be the first of its kind in Sonoma County.

On September 11, 2019, the California State Legislature passed Senate Bill 329. It is expected that Governor Newsom will approve the legislation.

Senate Bill 329 is similar to the proposed Santa Rosa ordinance in all areas with three exceptions:

- **Scope:** The Santa Rosa ordinance defines "aggrieved person" as "the individual directly subjected to the alleged discrimination; SB 329 defines "aggrieved person" to include, "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."
- **Occupancy:** The Santa Rosa ordinance defines a reasonable occupancy limit as two people per bedroom plus one person. SB 329 does not have any limits regarding occupancy.
- **Enforcement:** If the City adopts an ordinance, the City may bring an action on behalf of the aggrieved person. If the City does not adopt an ordinance, the State may bring an action. Under either the City ordinance or SB 329, the aggrieved person has a private right of action.

PRIOR CITY COUNCIL REVIEW

On September 15, 2015, the City Council heard a study session to review existing Fair Housing protections for tenants and a summary of case law relevant to source of income discrimination in California. Further action was not taken at that time due to pending litigation over a source of income discrimination ordinance in Santa Monica, California.

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On May 7, 2019, the City Council reviewed the goals, priorities and project timelines from the final report of the executive team retreat. The Tier 1 Goals timeline included a proposal to hear a draft non-discrimination ordinance on September 10, 2019. The Council requested a re-ordering of the Tier 1 Goals timeline and on May 28, 2019, the Council voted to review the non-discrimination ordinance on August 13, 2019.

The Department of Housing and Community Services presented a draft ordinance to Council on August 13, 2019. Council requested additional outreach efforts to hear the concerns of rental property owners and tenants using housing subsidies before bringing the draft ordinance back for consideration on September 24, 2019.

ANALYSIS

The HCV and other rental assistance programs are targeted to eligible households under certain income limits. In most areas of the country, there are more eligible households than assistance available which creates long waiting lists, particularly for the HCV program. The average wait for a voucher in Santa Rosa is approximately eight to ten years. In rental assistance programs, participants typically pay 30-40% of their income for their rent and utilities and the balance of the rent is paid directly to the landlord by the program.

California's current fair housing law prohibits housing discrimination based on a person's source of income but does not define vouchers or other third-party rental subsidies as income. Rental housing providers are permitted to enact policies that exclude rental assistance program participants, however, low-income renters who qualify for housing subsidies are often also members of other legally protected classes. Policies that deny housing opportunities to applicants using vouchers may have a disparate impact on those protected classes and in practice, discrimination against voucher holders could be used as a proxy for other illegal forms of discrimination. Protections for Santa Rosa tenants in rental assistance programs will both affirmatively further fair housing and address the affordable housing crisis.

The proposed ordinance has been modeled after similar ordinances in California and would prohibit rental housing providers from the following activities when based wholly or partially on sources of income:

1. To interrupt, terminate, 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 discriminating clause, condition or restriction due to source of income.

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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.

It would also be unlawful under the proposed ordinance for any person to use a financial or income standard for the rental of housing that does either of the following:

5. Fails to account for any 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 including, but not limited to, the Section 8 voucher program, on the same basis as rental payments to be made directly by the tenant or prospective tenant;
6. Fails to account for the aggregate sources of income of persons residing together or proposing to reside together or an aggregate income of tenants or prospective tenants and that cosigners or proposed cosigners on the same basis as the aggregate income of married persons residing together or proposing to reside together, so long as legal occupancy limits are not exceeded.

The proposed ordinance does not prevent landlords from screening applicants based on other permissible suitability factors such as credit scores and rental history. The ordinance does not compel landlords to participate in rental assistance programs but does require that applicants with these forms of assistance are treated equally in the application process.

Ordinance Revisions: Applicability

Stakeholders from owner and tenant interest groups who provided feedback on the August 13, 2019 draft of the proposed ordinance expressed concern that the ordinance was silent on applicability to unit types.

Owner representatives stated that owners of four or fewer single-family dwelling investment properties are fundamentally different than owners of apartment complexes, and that this group of landlords lacks the resources to effectively comply with the ordinance and with third-party rental assistance program requirements. Therefore, owner groups requested that single family dwellings should be excluded from the ordinance, and/or that the ordinance exclusions should mirror the Costa-Hawkins Rental

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Housing Act of 1995, which sets limits of the kind of rent control policies that local jurisdictions are allowed to impose.

Representatives from tenant interest groups disagreed with the assertion that certain owners or unit types should be excluded because the ordinance aligns with fair housing law and is not a rent control policy.

After consideration of these interests and further research and analysis by staff, the draft ordinance was revised to include the following language to Chapter 10-46.040 regarding applicability:

“Nothing in this Chapter shall be construed to apply to 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 Chapter 10-46.030 (D) which prohibits discriminatory notices, statements and advertisements.”

This language mirrors existing California Fair Employment and Housing Act language regarding allowed exclusions to fair housing law and the language in Senate Bill 329.

Ordinance Revisions: Occupancy Limits

Owner representatives expressed concern with language in the August 13, 2019 draft of the ordinance regarding aggregate sources of income. Chapter 10-46.030, (Prohibited Activities) Section E of the draft ordinance makes it unlawful to use an income standard for rental housing which, “fails to account for the aggregate sources of 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, so long as legal occupancy limits are not exceeded.” Owner interest groups indicated that the ordinance failed to define “legal occupancy limits” which could lead to confusion and disagreement between tenant applicants and property owners about what constitutes a legal occupancy limit.

In response to this concern, the draft ordinance was revised to include the following language in Chapter 10-46.040, (Exceptions), Section C:

“Nothing in this Chapter shall be construed to require a person to rent a housing accommodation to a family or tenants whose total number of persons exceeds the reasonable living space in the rental unit, which is defined as two people per bedroom plus one person.”

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Tenant and fair housing advocates expressed concern that this definition is too limiting and that while the so-called “two plus one” standard has long been accepted in the housing industry, more recent interpretations of occupancy limits under the Fair Employment and Housing Act consider the livable square footage of the unit rather than simply the number of bedrooms, but no specific case law or authority was cited.

Other Stakeholder Feedback

Efforts to engage rental property owners, managers, tenants and tenant advocates regarding concerns about the ordinance extended beyond discussions of the language and interpretation of the ordinance and focused on the Housing Choice Voucher program specifically. It was generally agreed by all stakeholders that a lack of clear information in the rental housing community contributes an owners’ decision not to accept rental assistance as a form of payment, and that a significant marketing effort to promote the benefits of the Housing Choice Voucher program could result in wider acceptance of vouchers in Santa Rosa and Sonoma County. In addition, it was generally agreed that offering incentives to property owners to participate in rental assistance programs may also increase acceptance of subsidies as a form of payment.

FISCAL IMPACT

Approval of this action does not have a fiscal impact on the General Fund.

ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

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ATTACHMENTS

- Ordinance

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