

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: April 9, 2019

TO: Honorable Members of the Housing Committee

FROM: Sharon M. Tso 
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Council File No: 18-0462
Assignment No: 19-03-0265

Source of Income Discrimination Ordinance

SUMMARY

On August 8, 2018, the City Council instructed the Housing Authority of the City of Los Angeles (HACLA) and the Los Angeles Housing and Community Investment Department (HCID), in consultation with the City Attorney, to report on policy options to increase acceptance and utilization of Section 8 vouchers and requested the City Attorney to draft an ordinance that would prohibit discrimination against Section 8 voucher holders in rental housing. HACLA, HCID, and the City Attorney presented the joint report and draft ordinance (CF 18-0462) at the January 23, 2019 meeting of Housing Committee (Committee).

The proposed ordinance would add Article 5.5.1 to Chapter IV of the Los Angeles Municipal Code and would prohibit discrimination based on any lawful source of income, rental assistance, subsidy, or financial aid in the renting of housing accommodations (draft ordinance). The draft ordinance also provides for remedies for violations of the ordinance.

The Committee considered the HCID and HACLA joint report and draft ordinance and instructed the Chief Legislative Analyst (CLA), with assistance from relevant departments, to report on recommendations regarding:

- Implementation and enforcement of the draft ordinance
- The budgetary and staffing resources necessary to implement the draft ordinance
- An outreach and education campaign
- Methods to incentivize owner participation and reduce landlord burdens and delays related to vouchers

This report provides options for enforcement of the draft ordinance, the budgetary and staffing implications of implementation, a discussion regarding source of funds for implementation, and options for an outreach and education campaign.

In order to expedite program implementation at this time, we recommend that the draft ordinance be adopted and that HCID include source of income discrimination services to the scope of work for the fair housing services contract for Fiscal Year 2019-2020. In addition, the Committee may consider further actions regarding funding and outreach efforts contained in this report.

CLA RECOMMENDATIONS:

That the City Council:

1. Approve the HCID and HACLA Joint Report dated November 16, 2018, (CF 18-0462) and adopt the City Attorney draft ordinance as written.
2. Authorize HCID to amend the scope of work for the fair housing services contract for FY 2019-2020 to include enforcement of the source of income discrimination ordinance.
3. Instruct the City Administrative Officer, with the assistance of the CLA and HCID, to identify a source of funds for enforcement of the proposed source of income discrimination ordinance under the fair housing services contract for FY 2019-2020.

DISCUSSION:

Current Fair Housing Efforts

The City currently provides Fair Housing services through a contract with the Southern California Housing Rights Center (HRC), including: counseling, discrimination complaint investigation, outreach/education, and legal services or legal referrals (C-128714). Complainants that require further assistance are referred to State Department of Fair Employment and Housing (DFEH) by the HRC for assistance through the State process. State fair housing laws are governed by the Fair Employment and Housing Act of 1986 (FEHA), which the City is largely unable to enforce due to the pre-emption clause of FEHA. Therefore, the City must largely depend on remedies provided by the DFEH. FEHA provides protections from housing discrimination for 15 protected classes, including: race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of that person. Although FEHA includes a “source of income” protection, the definition does not include Section 8 vouchers or any other type of housing assistance, and therefore does not prohibit discrimination against voucher or housing assistance holders.

The previous fair housing services contract was approved on October 11, 2016 and has been extended by amendment for two additional 12-month terms and one additional 6-month term with HRC. The service term for the last amendment will end on June 30, 2019. An RFP for a new fair housing services contract was released by HCID on July 23, 2018 and one response was received from HRC. Approval of contract will be facilitated through the 45th Year Consolidated Plan. The contract has been funded annually for \$700,500 by the Community Development Block Grant (CDBG) and the Rent Stabilization Trust Fund revenues. Of the total annual contract compensation amount, \$370,500 (52.8%) is programmed for Fair Housing through the Consolidated Plan, and the remaining \$330,000 (47.2%) is funded by the Rent Stabilization Trust Fund.

Although the City Attorney does not formally administer any programs directly involving enforcement of fair housing laws or any other types of discrimination-based laws, they assist residents with inquiries and file civil actions on behalf of those who experience discrimination or unfair business practices.

Source of Discrimination Ordinance

Motion (Krekorian-Cedillo), introduced on May 23, 2018, requested the City Attorney draft an ordinance for consideration by Council that would prohibit discrimination against Section 8 voucher holders in rental housing. Accordingly, the City Attorney presented the draft ordinance at the January 23, 2019 meeting of the Housing Committee. The draft ordinance prohibits the following activities on the basis of an individual's source of income: 1) Refusing to rent or lease 2) Applying of different terms or conditions 3) Representing available units as unavailable for viewing 4) Publishing any notice that indicates preference based on source of income. The draft ordinance would be applicable to all housing accommodations, including condominiums, and defines "source of income" as including any lawful source of income, rental assistance, subsidy, or financial aid.

The ordinance is broadly constructed and does not specify enforcement authority to any City department. The draft ordinance further specifies that any person may enforce the action through civil suit.

As a remedy to a source of income discrimination violation, the draft ordinance provides for three times the amount of actual damages and special damages or three times the amount of one month's rent that the landlord charges for the housing accommodations at issue, whichever is higher. The court may also award attorney's fees, costs of the action, and punitive damages. The proposed ordinance would also allow the City Attorney, District Attorney, or other related parties to bring an action for equitable relief, which may include injunctions or other forms of corrective actions for the complainant.

Implementation/Enforcement

The HACLA/HCID joint report identified HCID and the City Attorney as City departments that could implement the draft ordinance. HCID and the City Attorney have indicated that they do not have the capacity to handle a complaint intake, investigation, mediation, and resolution process for a large number of complaints and would require a significant allocation of addition resources to create a new unit for this program.

Of the cities highlighted by the HCID/HACLA joint report, Santa Monica enforces a source of income discrimination ordinance through their City Attorney, San Diego through a third-party contractor, and Denver and San Francisco through their city human rights commissions. Data for jurisdictions of comparable size to Los Angeles is not available at this time and it is not possible to anticipate the volume of complaints the City may receive. Although Chicago, with a population of 2,722,586, does not explicitly protect voucher holders in their local fair housing discrimination ordinance, the Chicago Commission on Human Relations resolved 3 source of income cases for voucher/housing assistance holders in 2017.

The City has several options available to implement the draft ordinance. The City may actively implement the ordinance by adding source of income discrimination to the fair housing services contract or allow the ordinance to be enforced solely through private action. The Council may also consider the proposed Civil and Human Rights Commission for enforcement in the future. These options are discussed in detail below.

Implementation through the Expansion of Services for Fair Housing Contract

The most feasible method consistent with current City practice would be to expand the scope of work for the City's fair housing services contract to include protections for source of income discrimination. This option would not require any additional staffing but would necessitate a proportionate increase in compensation to the fair housing contractor.

The source of income discrimination complaints would be investigated in a manner consistent with current fair housing complaint investigations. Source of income discrimination violations would be reported to an implementing authority to be determined by Council. The complaint would be processed and investigated in order to determine if there is a violation. The complainant would then be entitled to remedies as provided for in the draft ordinance. A complaint process for source of income discrimination complaints would provide previously unavailable relief for the residents of Los Angeles.

The HRC contract scope of work currently includes intake of discrimination inquiries, intake of discrimination complaints, and complaint investigation. Because FEHA does not cover Section 8 vouchers and other housing assistance under the "source of income" protected class, HRC would refer a case in which a violation has been found to the City Attorney, which would file a civil complaint under the ordinance. Without the need to handle intake, investigation, or non-credible complaints, the City Attorney would be able to file these complaints without the need for additional resources, absent of excessive violation numbers. This method would maximize the City's contribution to enforcement of the ordinance without creating the need for significant resource allocation.

Providing source of income discrimination services through the fair housing services contract would provide a stable annual fiscal impact for the services, assuming there is no further expansion of discrimination services, and allow for immediate delivery of this service. According to an estimate provided by the HRC and HCID, expanding the scope of services for the current contract would require approximately \$140,000.

Implementation through Private Action

If approved as written, the draft ordinance does not require any active City involvement and would allow the provisions of the draft ordinance to be completely enforced through private action. This would allow any private individual in the City of Los Angeles who suspects they have been discriminated against to file a civil claim in court. If the Council elects to actively enforce the ordinance, private individuals would retain the option to seek relief through private civil action. According to the January 23, 2019 HCID and HACLA joint report, studies have found that voucher acceptance rates have increased by 5 to 12 percent in jurisdictions with a source of income discrimination ordinance. Approval of the ordinance itself could also become a deterrent to potential acts of discrimination.

Implementation of the draft ordinance through private action could also be temporary until such a time that resources are available for the City to take a more direct role. Implementing the ordinance through private action would allow for an outreach period to educate tenants and landlords regarding the ordinance prior to any active City enforcement. Other than potential outreach costs, there would be no need for the additional allocation of resources to implement the ordinance through private action.

Implementation through the Proposed Civil and Human Rights Commission

A majority of cities in California, and nationwide, enforce source of income discrimination laws through civil or human rights commissions. Although the City does not have such a commission, the creation of a Civil and Human Rights Commission (Commission) which would enforce a Civil and Human Rights Ordinance to prohibit discrimination in housing, employment, private commerce, and education (CF 18-0086) is being considered by Council. Once implemented, the Commission may be an option for the implementation of the source of income discrimination ordinance. The advantages of implementing the draft ordinance through the Commission would be direct involvement in the complaint intake process and the ability of the City to advocate directly on behalf of residents throughout the complaint process until resolution.

The Civil and Human Rights Commission and Ordinance are currently pending before the Council and funding recommendations are pending before the Budget and Finance Committee. Following Council approval, the Commission would require additional time prior to full operation for the appointment of Commissioners, hiring of staff, and drafting of rules and regulations. In addition, to enforce the source of income discrimination ordinance, the proposed Civil and Human Rights Ordinance would need to be amended to include a “source of income” protected class which includes Section 8 and housing voucher assistance. Although the Commission is not currently a feasible option, due to the broad implementation authority of the ordinance, responsibility for enforcement of the source of income discrimination ordinance could be assumed by the Civil and Human Rights Commission if approved by Council at a future date.

Outreach

An outreach and education campaign for both renters and landlords could increase the effectiveness of the ordinance’s ability to increase housing voucher acceptance rates. The scope of work for the current housing services contract includes outreach efforts such as holding of community meetings and events, media, and literature distribution. If source of income protections are added to the fair housing services contract, these contracted outreach services would also be provided for source of income discrimination and would be ongoing efforts throughout the term of the contract, funded annually through renewal of the contract.

A more robust outreach program would require procurement of services through a bid process for a one-time outreach effort. This would require additional funds, the final amount of which would be dependent on the bids received by the City. An effective date for the ordinance could be implemented in conjunction with a one-time outreach effort to inform both renters and landlords, but this would delay the availability of remedies for source of income discrimination claims.

An outreach strategy to educate before enforcement begins would be preferable to provide warning to landlords prior to implementation and to be able to adequately provide compliance information for landlords. This would also allow the City to address renter education and to ensure renters have the information needed to seek remedy under the ordinance.

Budget and Staff/Source of Funds

According to HCID, the sources of funding which have historically funded the fair housing contract (Rent Stabilization Trust Fund and CDBG) are not currently available to fund implementation of the proposed source of income discrimination ordinance. Funding for additional enforcement,

notwithstanding the City's annual budget process, could be provided through an allocation of funds from the General Fund or a reprogramming of CDBG funds in the City's 45th Year (FY 19-20) Consolidated Plan which is currently under consideration by Council.

As previously noted, HRC and HCID estimate that \$140,000 will be needed to fund the addition of source of income discrimination services to the fair housing contract scope of work. This funding would allow HRC to receive, evaluate, investigate, and mediate complaints of source of income discrimination. Education and outreach services to tenants and landlords would also be included. Implementation through contracted services would not require any additional City staffing. As previously noted, the Housing Division of the City Attorney's Office would be able to absorb the workload created by referrals from HRC without requiring additional resources.

Implementation solely through private action would not require any additional funding or staffing resources, other than funding for outreach efforts.


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