

---

DATE: AUGUST 15, 2013

## STAFF REPORT

AGENDA ITEM NO. 7.4

---

TO: FOSTER CITY PLANNING COMMISSION

PREPARED BY: LESLIE CARMICHAEL, CONSULTING PLANNER

CASE NO.: MC-13-001

SUBJECT: SOURCE OF INCOME ANTI-DISCRIMINATION

---

### **REQUESTED ACTION/PURPOSE**

To consider and adopt a Resolution recommending City Council approval of an amendment to Title 5, Business Licenses and Regulation, of the Foster City Municipal Code, to add a new Chapter 5.72, Tenant Anti-Discrimination, that prohibits discrimination by landlords against an existing tenant on the basis of the tenant's use of a Section 8 rental subsidy.

### **KEY PLANNING OR DESIGN ISSUES**

- Creation of a new Chapter 5.72 to prohibit discrimination by landlords against an existing tenant on the basis of the tenant's use of a Section 8 rental subsidy.

### **BACKGROUND**

The Section 8 housing voucher program is a federal program administered by the local housing authority to assist very low income families, the elderly and disabled in affording housing in the private market. In San Mateo County, the Section 8 program is administered by the San Mateo County Housing Authority. Once someone has been approved for the program, it is their responsibility to find housing where the landlord agrees to participate in the Section 8 program. The unit must meet minimum standards of health and safety and be inspected by the administering agency. The unit can be a house, townhouse, condo or apartment. The tenant pays 30% of their income toward the rent and the housing subsidy pays the balance. The subsidy is paid to the landlord directly by the Housing Authority on behalf of the participating tenant.

The California Fair Employment and Housing Act (FEHA) makes it unlawful "for the owner of any housing accommodation to discriminate against... any person because of the ...source of income.... of that person." In the Sabi v. Sterling case in 2010, the Court of Appeal held that the California Fair Employment and Housing Act's "source of income" discrimination provision does not protect Section 8 tenants from discrimination based on their participation in the Section 8 program.

The San Mateo County Housing Authority informed staff that there are 72 Section 8 vouchers in use in Foster City as of July 1, 2013. Of those 72 vouchers, 33 households are elderly and 6 households are at least one disabled person. Countywide, about 50% percent of the vouchers

August 15, 2013

issued are in use, leaving about 50% percent not in use, in large part due to landlords being unwilling to participate in the Section 8 program.

Staff conducted an informal telephone survey of apartment developments and found that the majority do not accept Section 8 vouchers. Since 2000, the developments that have an Affordable Housing Covenant requiring provision of affordable housing units have a provision in the Covenant requiring that they accept Section 8 vouchers. Approximately 17% of the apartment units in Foster City are currently available to voucher holders.

For a landlord, the Section 8 program requires:

1. Submittal of a "Request for Tenancy Approval" (RTA) form with the proposed lease agreement.
2. Once the RTA form is received, the Housing Authority will review the proposed rent and determine if it's approvable.
3. The Housing Authority will then conduct a Housing Quality Standards inspection. The Housing Authority will contact the landlord within 5 working days to schedule the inspection.
4. Once the unit passes inspection and the rent is approved, the Housing Authority will prepare the Housing Assistance Payment Contract with a HUD-required Lease Addendum.
5. The landlord and tenant then sign and execute the Lease and return it to the Housing Authority with the completed Contract.
6. Rent increases after the initial lease term require a 60-day notice to the tenant and the Housing Authority.

Landlords who participate in the program receive the same rent as market rent for the unit. The Section 8 program does not require them to accept a lower rent.

The Foster City Housing Element includes the following policy and implementation measures related to equal housing opportunities:

**H-F-1 Equal Housing Opportunity.** The City will ensure provision of housing opportunities for all people and will take appropriate actions when necessary to ensure that the sale, rental, or financing of housing is not denied to any individual on the basis of race, sex, national origin, religion, age or other arbitrary factors.

*H-F-1-a **Non-Discrimination.** To ensure that the sale, rental, or financing of housing is not denied to any individual on the basis of race, sex, national origin, religion, age, marital status, disability, or other arbitrary factors, Foster City will ensure that state and federal laws are adhered to regarding fair housing. The City, through its Community Development Department, will refer discrimination complaints to the appropriate legal service, county, or state agency. The City will assist local nonprofit organizations, as appropriate, to provide public information and education services. Target: Ongoing. Responsible Agency: Community Development Department.*

*H-F-1-b **Anti-Discrimination Ordinance and Zoning Definitions.** Adopt an Anti-Discrimination Ordinance to prohibit discrimination based on the source of a person's income or the use of rental subsidies, including Section 8 and other rental programs that provide extremely low, very low, and low income housing assistance. In addition, amend the definition of a "family" in the Zoning Ordinance to comply with State Law so that it does not*

*preclude special needs housing (see also Program H-D-9-h). Target: 2011. Responsible Agency: Community Development Department.*

**ANALYSIS**

The discrimination against Section 8 voucher holders significantly reduces the pool of housing that is available to them. The voucher recipients already face significant financial obstacles to obtaining housing. The housing vouchers are supposed to help these recipients to overcome financial obstacles to finding housing.

Staff researched various anti-discrimination regulations based on source of income and found three basic types:

1. Prohibit discrimination against existing tenants with redress by mediation first, then by civil action (Corte Madera);
2. Prohibit discrimination based on source of rental payments, with redress by civil action (East Palo Alto);
3. Prohibit discrimination based on rental payments being made by other individuals or organizations with redress by civil action and/or administrative proceeding (Seattle).

**Table 1:  
Summary of Various Source of Income Anti-Discrimination Regulations**

<b>Jurisdiction</b>	<b>Exceptions</b>	<b>Approach</b>	<b>Redress</b>
Corte Madera	Does not apply if property contains 10 or fewer dwelling units.	“shall be unlawful to discriminate... to refuse to accept at Section 8 rent subsidy...”	1. First try mediation 2. civil action if not resolved through mediation 3. city has no liability for enforcement
East Palo Alto	Does not apply to structures containing fewer than 3 dwelling units. Does not apply if bathroom or kitchen are shared with owner.	“unlawful ... to use a financial or income standard.. that...: <ul style="list-style-type: none"> <li>• fails to account for rental payments ...made by other individuals or organizations</li> <li>• fails to account for aggregate income of persons residing together</li> </ul>	Civil injunction brought by any aggrieved person or city attorney or district attorney
Seattle	None	“unfair practice.... to discriminate against any person, prospective occupant...” “Discriminate means any conduct...the effect of which is to adversely affect... because of race, color...participation in a Section 8 program....”	Civil action by any charging party or aggrieved person. May also file a complaint with the Seattle Office for Civil Rights for an administrative proceeding.

The proposed ordinance is modeled after the ordinance Corte Madera to prohibit discrimination against an existing tenant who wishes to use a Section 8 voucher and requires mediation as a first step for redress, which could be followed by a civil action. The City would have no liability for enforcement. The ordinance prohibits using a financial or income standard for the rental of housing that does either of the following:

- 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;
- 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 or proposed cosigners on the same basis as the aggregate income of married persons residing together or proposing to reside together.

The purpose of the ordinance is to encourage landlords to participate in the Section 8 rent subsidy program administered by the San Mateo County Department of Housing and to establish a right of existing and prospective tenants to be free of discrimination based on their use of a rental subsidy. It would be unlawful for the owner or manager of rental housing to discriminate against an existing tenant or prospective on the basis of that tenant's use of a Section 8 rent subsidy. It would be a violation of this prohibition for a property owner or manager to refuse to accept a Section 8 rent subsidy for which an existing tenant qualifies, or to terminate the tenancy of an existing tenant based on the property owner's or manager's refusal to participate in a Section 8 rent subsidy program for which an existing tenant has qualified.

Enforcement is proposed to be first through mediation with the Peninsula Conflict Resolution Center, and then civil action. The City would not have any liability for enforcement.

**Table 2: Proposed Anti-Discrimination Provisions**

Provision	Proposed	Comments/Options
<b>Purpose and Findings</b>	<p>A. Equal housing opportunities should be available to all people. The City will ensure provision of housing opportunities for all people and will take appropriate actions when necessary to ensure that the sale, rental, or financing of housing is not denied to any individual on the basis of race, sex, national origin, religion, age or other arbitrary factors.</p> <p>B. The City from time to time receives complaints that tenants who qualify for Section 8 rental assistance are unable to benefit from it because of the unavailability of participating landlords.</p> <p>C. The purpose of this ordinance is to establish a right of existing tenants to be free of discrimination based on their use of a rental subsidy.</p>	<p>States purpose is to establish a right of existing tenants to be free of discrimination based on their use of a rental subsidy.</p>
<b>Right to Protection</b>	<p>It shall be unlawful for the owner or manager of rental housing to discriminate against an existing tenant on the basis of that tenant's use of a Section 8 or any other rent subsidy. It shall be a violation of this prohibition for a property owner or manager to refuse to accept a Section 8 or any other rent subsidy for which an existing tenant qualifies, or to terminate the tenancy of an existing tenant based on the property owner's or manager's refusal to participate in a Section 8 or any other rent subsidy Program for which an existing tenant has qualified.</p>	<p>Would make it unlawful to discriminate against an existing tenant based on participation in programs that provide rental payments.</p>
<b>Exceptions</b>	<p>Nothing in this Chapter shall be construed to apply to rental or leasing of any housing unit located on a single parcel containing ten or fewer units.</p>	<p>Properties containing 10 or fewer units would be exempted. This would eliminate subjecting landlords with just a few units to the administrative process required for the Section 8 program. Buildings containing more than 10 units are likely to have professional management and be better able to handle the additional</p>

Provision	Proposed	Comments/Options
<b>Redress</b>	<p>A. A person whose rights have been violated under this Chapter may not commence a civil action to enforce those rights unless he or she has first offered to mediate the controversy. The complainant's obligations under this section shall be met if the complainant:</p> <ul style="list-style-type: none"> <li>a. Offers to mediate the controversy under the auspices of the Peninsula Conflict Resolution Center, or any free mediation service that the City may establish for this purpose in the future;</li> <li>b. Mediates in good faith. The complainant's obligations under this section shall be deemed satisfied if the opposing party does not agree to mediation within 14 days after being requested to mediate, or if no mediated resolution is reached within 30 days after being requested to mediate, despite the complainant's good faith efforts.</li> </ul> <p>B. If a complaint of discrimination under this ordinance is not resolved through mediation, and the complainant has complied with his or her responsibilities under the foregoing subdivision, the complainant has the right to initiate a civil action for damages and injunctive relief. The litigating complainant shall file a courtesy copy of the lawsuit with the City Attorney.</p>	<p>procedural requirements.</p> <p>Mediation is required as a first course of redress. If mediation is not successful, a complainant may initiate a civil action.</p>
<b>Liability</b>	<p>A. The City shall not be liable for any damages, costs, or expenses which are the result of any act or omission of or any decision made by any person (e.g., mediator, arbitrator, or court) concerning an anti-discrimination right claim or a complainant's</p>	<p>The City would not be liable for any enforcement or claims related to this Chapter.</p>

Provision	Proposed	Comments/Options
	<p>assertions pertaining to rights granted or conferred by this Chapter.</p> <p>B. Under no circumstances shall the City have any responsibility or liability to enforce this Chapter or to seek any legal redress, civil or criminal, for any decision it or any other person makes concerning an anti-discrimination claim.</p> <p>C. Violations of this ordinance shall not constitute a crime.</p>	

## **NEXT STEPS**

The Planning Commission's recommendation will be forwarded to the City Council for their consideration at a noticed Public Hearing.

## **INDIVIDUALS, ORGANIZATIONS AND DOCUMENTS CONSULTED**

Foster City General Plan  
Foster City Municipal Code  
Jean Savaree, City Attorney  
Camas Steinmetz, Deputy City Attorney  
21 Elements website: [www.21elements.org](http://www.21elements.org)  
Corte Madera Municipal Code, Chapter 5.30  
East Palo Alto Municipal Code, Chapter 14.16  
Seattle Municipal Code Chapter 14.08  
"State, Local and Federal Laws Barring Source-of-Income Discrimination," Poverty & Race  
Research Action Council, Updated November 2012.  
Sabi v. Sterling (2010), 183 Cal. App. 4<sup>th</sup> 916 – 2010.

## **ATTACHMENTS**

Resolution  
Draft Ordinance  
"Discrimination in awarding Section 8 housing," Wikipedia

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FOSTER CITY  
RECOMMENDING CITY COUNCIL ADOPTION OF AMENDMENTS TO TITLE 5, BUSINESS  
LICENSES AND REGULATION, OF THE FOSTER CITY MUNICIPAL CODE BY ADDING  
CHAPTER 5.72, TENANT ANTI-DISCRIMINATION – MC-13-001

CITY OF FOSTER CITY PLANNING COMMISSION

WHEREAS, the City of Foster City desires to eliminate any discrimination in the provision of housing based on a person's race, color, religion, sex, national origin, familial status, disability or source of funds for rental payments; and

WHEREAS, the San Mateo County Housing Authority, which administers the Section 8 rent subsidy program, reports a shortage of landlords participating in the Section 8 program, and that approximately 50% who qualify for Section 8 rental assistance are unable to benefit from it because of the unavailability of participating landlords; and

WHEREAS, cities are required to identify constraints to providing affordable housing and develop strategies for removing those constraints; and

WHEREAS, the following provisions of the Housing Element of the City of Foster City's General Plan reflect the City's intention to encourage equal housing opportunities:

- **Policy H-F-1 Equal Housing Opportunity.** The City will ensure provision of housing opportunities for all people and will take appropriate actions when necessary to ensure that the sale, rental, or financing of housing is not denied to any individual on the basis of race, sex, national origin, religion, age or other arbitrary factors.
- *Implementation Program H-F-1-a **Non-Discrimination.** To ensure that the sale, rental, or financing of housing is not denied to any individual on the basis of race, sex, national origin, religion, age, marital status, disability, or other arbitrary factors, Foster City will ensure that state and federal laws are adhered to regarding fair housing. The City, through its Community Development Department, will refer discrimination complaints to the appropriate legal service, county, or state agency. The City will assist local nonprofit organizations, as appropriate, to provide public information and education services. Target: Ongoing. Responsible Agency: Community Development Department.*
- *Implementation Program H-F-1-b **Anti-Discrimination Ordinance and Zoning Definitions.** Adopt an Anti-Discrimination Ordinance to prohibit discrimination based on the source of a person's income or the use of rental subsidies, including Section 8 and other rental programs that provide extremely low, very low, and low income housing assistance. In addition, amend the definition of a "family" in the Zoning Ordinance to comply with State Law so that it does not preclude special needs housing (see also Program H-D-9-h). Target: 2011. Responsible Agency: Community Development Department.*

WHEREAS, the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) under Public Resources Code Section 15061(b)(3) because it does not have the potential for causing a significant effect on the environment; and

WHEREAS, a Notice of Public Hearing was duly posted and published for consideration at the Planning Commission meeting of August 15, 2013, and, on said date, the Public Hearing was opened, held, and closed.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission, based on facts and analysis in the staff report, written and oral testimony, and exhibits presented, finds that:

1. The proposed amendments are consistent with the Foster City General Plan, specifically Housing Element Policy H-F-1 and Housing Implementation Measures H-F-1b; and
2. The proposed amendments will assist the City to facilitate the provision of housing for all segments of the community.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Foster City hereby recommends that the City Council adopt the proposed amendments to Title 5, Business Licenses and Regulation, of the Foster City Municipal Code (MC-13-001) as presented in the attached draft ordinance, Exhibit A, attached hereto and incorporated herein.

PASSED AND ADOPTED by the Planning Commission of the City of Foster City at a Regular Meeting thereof held on August 15, 2013 by the following vote:

AYES, COMMISSIONERS:

NOES, COMMISSIONERS:

ABSTAIN, COMMISSIONERS:

ABSENT, COMMISSIONERS:

---

DAN DYCKMAN, CHAIR

ATTEST:

---

CURTIS BANKS, SECRETARY

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FOSTER CITY ADDING CHAPTER 5.72, TENANT ANTI-DISCRIMINATION, OF TITLE 5, BUSINESS LICENSE AND REGULATION, TO THE FOSTER CITY MUNICIPAL CODE – MC-13-001

CITY OF FOSTER CITY

THE CITY COUNCIL OF THE CITY OF FOSTER CITY DOES FIND AND ORDAIN as follows:

Section 1: The City Council of the City of Foster City, California, hereby finds and determines:

WHEREAS, the City of Foster City desires to eliminate any discrimination in the provision of housing based on a person's race, color, religion, sex, national origin, familial status, disability or source of funds for rental payments; and

WHEREAS, the San Mateo County Housing Authority, which administers the Section 8 rent subsidy program, reports a shortage of landlords participating in the Section 8 program, and that approximately 50% who qualify for Section 8 rental assistance are unable to benefit from it because of the unavailability of participating landlords; and

WHEREAS, cities are required to identify constraints to providing affordable housing and develop strategies for removing those constraints; and

WHEREAS, the following provisions of the Housing Element of the City of Foster City's General Plan reflect the City's intention to ensure provision of housing opportunities for all people:

**Policy H-F-1 Equal Housing Opportunity.** The City will ensure provision of housing opportunities for all people and will take appropriate actions when necessary to ensure that the sale, rental, or financing of housing is not denied to any individual on the basis of race, sex, national origin, religion, age or other arbitrary factors.

*Implementation Measure H-F-1-a **Non-Discrimination.** To ensure that the sale, rental, or financing of housing is not denied to any individual on the basis of race, sex, national origin, religion, age, marital status, disability, or other arbitrary factors, Foster City will ensure that state and federal laws are adhered to regarding fair housing. The City, through its Community Development Department, will refer discrimination complaints to the appropriate legal service, county, or state agency. The City will assist local non-profit organizations, as appropriate, to provide public*

information and education services. Target: Ongoing. Responsible Agency: Community Development Department.

**Implementation Measure H-F-1-b Anti-Discrimination Ordinance and Zoning Definitions.** Adopt an Anti-Discrimination Ordinance to prohibit discrimination based on the source of a person's income or the use of rental subsidies, including Section 8 and other rental programs that provide extremely low, very low, and low income housing assistance. In addition, amend the definition of a "family" in the Zoning Ordinance to comply with State Law so that it does not preclude special needs housing (see also Program H-D-9-h). Target: 2011. Responsible Agency: Community Development Department.

WHEREAS, Government Code Section 65583 requires that the Housing Element address and, where appropriate and legally possible, remove governmental constraints to making adequate provision for the existing and projected housing needs of all economic segments of the community; and

WHEREAS, the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) under Public Resources Code Section 15061(b)(3) because it does not have the potential for causing a significant effect on the environment.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF FOSTER CITY, CALIFORNIA, ORDAINS THAT:

Section 2. A new Chapter 5.72 shall be added to Title 5, Business Licenses and Regulation, of the Foster City Municipal Code as follows:

Chapter 5.72  
Tenant Anti-Discrimination

- Sections:
- 5.72.010 Purpose and Findings.
  - 5.72.020 Right to Protection.
  - 5.72.030 Exceptions
  - 5.72.040 Redress
  - 5.72.050 Liability.

**5.72.010 Purpose and Findings.**

A. Housing is an essential requirement for all residents of an urban area. Housing Element Policy H-F-1 of the Foster City General Plan states, "The City will ensure provision of housing opportunities for all people and will take appropriate actions when necessary to ensure that the sale, rental, or financing of housing is not denied to any individual on the basis of race, sex, national origin, religion, age or other arbitrary factors."

B. The City from time to time receives complaints that tenants who qualify for Section 8 rental assistance are unable to benefit from it because of the unavailability of participating landlords.

C. The purpose of this ordinance is to establish a right of existing tenants to be free of discrimination based on their use of a rental subsidy.

#### **5.72.020 Right to Protection.**

It shall be unlawful for the owner or manager of rental housing to discriminate against an existing tenant on the basis of that tenant's use of a Section 8 or any other rent subsidy. It shall be a violation of this prohibition for a property owner or manager to refuse to accept a Section 8 or any other rent subsidy for which an existing tenant qualifies, or to terminate the tenancy of an existing tenant based on the property owner's or manager's refusal to participate in a Section 8 or any other rent subsidy Program for which an existing tenant has qualified.

#### **5.72.030 Exceptions.**

Nothing in this Chapter shall be construed to apply to rental or leasing of any housing unit located in a structure on the same property containing ten or fewer units.

#### **5.72.040 Redress**

- A. A person whose rights have been violated under this Chapter may not commence a civil action to enforce those rights unless he or she has first offered to mediate the controversy. The complainant's obligations under this section shall be met if the complainant:
  - a. Offers to mediate the controversy under the auspices of the Peninsula Conflict Resolution Center, or any free mediation service that the City may establish for this purpose in the future;
  - b. Mediates in good faith. The complainant's obligations under this section shall be deemed satisfied if the opposing party does not agree to mediation within 14 days after being requested to mediate, or if no mediated resolution is reached within 30 days after being requested to mediate, despite the complainant's good faith efforts.
- B. If a complaint of discrimination under this ordinance is not resolved through mediation, and the complainant has complied with his or her responsibilities under the foregoing subdivision, the complainant has the right to initiate a civil action for damages and injunctive relief. The litigating complainant shall file a courtesy copy of the lawsuit with the City Attorney.

#### **5.72.050 Liability.**

- A. The City shall not be liable for any damages, costs, or expenses which are the result of any act or omission of or any decision made by any person (e.g., mediator, arbitrator, or court) concerning an anti-discrimination right claim or a complainant's assertions pertaining to rights granted or conferred by this Chapter.

- B. Under no circumstances shall the City have any responsibility or liability to enforce this Chapter or to seek any legal redress, civil or criminal, for any decision it or any other person makes concerning an anti-discrimination claim.
- C. Violations of this ordinance shall not constitute a crime.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 5. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

This Ordinance was introduced and read on the \_\_\_\_ day of \_\_\_\_\_, 2013, and passed and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

PAM FRISELLA, MAYOR

ATTEST:

---

DORIS L. PALMER, CITY CLERK

# Discrimination in awarding Section 8 housing

From Wikipedia, the free encyclopedia

Racial and economic segregation in the housing market have been a major problem throughout in the history of the U.S.. In 1968, Congress enacted the Fair Housing Act (FHA) as Title VIII of the Civil Rights Act of 1968 to combat racial segregation.<sup>[1]</sup> In 1974, to further combat the concentration of poverty and racial segregation in housing, the government developed the Section 8 Housing Voucher Program (now known as the Housing Choice Voucher Program), which supplies vouchers to low-income tenants to assist with rental payments.<sup>[2]</sup>

Yet, despite receiving vouchers to help with rental payments, participants in the program still experience substantial difficulties obtaining housing. There is noticeable **discrimination that takes place within the Section 8 Housing Voucher Program.**<sup>[3]</sup>

Under the Section 8 Housing Voucher Program, participants can use the voucher to pay a portion of their rent. However, participation in the Section 8 Housing Voucher Program is voluntary for landlords.<sup>[4]</sup> Once a landlord has chosen to participate in the program, a landlord can withdraw for many reasons. Many of the participants in this program are minorities or persons with disabilities and oftentimes the landlords will withdraw from the program for discriminatory reasons.<sup>[5]</sup> As neighborhoods have gentrified, voucher holders are finding that property owners who might have taken their vouchers in the past are now turning them away.<sup>[6]</sup>

## Contents

- 1 Background on the Section 8 Housing Voucher Program
- 2 Discrimination in the Section 8 Voucher Program
- 3 The Effects of Discrimination on the Section 8 Housing Voucher Program
- 4 Disparate Impact Claims to Address Section 8 Housing Voucher Discrimination
- 5 References

## Background on the Section 8 Housing Voucher Program

There are more than two million households in the United States that participate in the Section 8 Housing Choice Voucher Program (the Section 8 voucher program) to afford privately owned rental housing.<sup>[7]</sup> The Section 8 Program provides rent subsidies to low income families who then seek out participating landlords who will rent out property to them. Thus, the Section 8 Program is designed to reduce the barriers to obtain affordable housing for people with low incomes. There are many landlords across the country participating in this program to offer low-income families an opportunity to choose housing outside of public housing.<sup>[7]</sup>

Under this program, the federal government provides rent subsidies to eligible low-income families who rent from participating landlords. Local Public Housing Authorities (PHAs) manage and administer the Section 8 voucher program in conjunction with the Department of Housing and Urban Development

(HUD).<sup>[8]</sup> The PHAs issue vouchers to qualifying families who then independently find suitable rental housing from private owners and landlords who voluntarily take part in the program. In order to participate in the program, landlords must meet basic housing quality standards, rent at rates within fair market guidelines set by HUD and the local PHA.<sup>[9]</sup>

When a Section 8 voucher participant rents from a participating landlord, the local PHA “pays the difference between the household’s contribution (set at 30 percent of income) and the total monthly rent.”<sup>[8]</sup> The Section 8 voucher program does not set a maximum rent, but participants must pay the difference between the calculated subsidy and actual rent.<sup>[8]</sup> Landlords receive the subsidy directly from the PHAs.

## Discrimination in the Section 8 Voucher Program

One of the major problems with the Section 8 Housing Voucher Program is that participants in the program often run into problems finding apartments to rent. In 2001, HUD conducted a study to determine the success rates of voucher holders in finding and securing apartments to rent.<sup>[10]</sup> In the first study, in the early 1980s, 50 percent of the Section 8 Housing Voucher participants were able to find housing. This number increased to 68 percent from 1985 to 1987.<sup>[10]</sup> There was a rise to 81 percent by 1993. However, the figures dropped to 69% success in 200.<sup>[10]</sup> The low success rates can be attributed to landlords declining to accept the vouchers either because of discrimination against the participants in the program or because of the burdens the program places on housing providers.

A problem with the Section 8 Housing Voucher Program has to do with the fact that participation in the program is voluntary. There are many participants in the program who cannot find a landlord who will accept the vouchers. For example, there have been instances where a landlord is participating in the Section 8 Housing Voucher Program and then all of the sudden decides to withdraw from participation in the program. This is a type of source-of-income discrimination that occurs where landlords refuse to rent to individual because of their source of income is a public assistance.<sup>[11]</sup> Income from public assistance can include social security benefits, disability benefits, Temporary Assistance to Needy Families (TANF), or Section 8 Housing Vouchers. Some landlords have been particularly resistant to accepting tenants who use the vouchers and have subsequently adopted no-voucher policies that are similar to past discriminatory practices like the no-children policies.<sup>[11]</sup>

Section 8 Housing Voucher Discrimination creates barriers to people finding affordable housing opportunities. The income of families who receive vouchers is at or below 50% of the area median income and this means these families face financial obstacles to obtaining needed goods and services. These families rely on vouchers to overcome their financial obstacles and to find affordable housing. Voucher discrimination reestablishes some of the barriers to finding affordable housing. It could be negatively hindering the federal government’s goal to provide a suitable home for every American family.<sup>[12]</sup>

## The Effects of Discrimination on the Section 8 Housing Voucher Program

Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act (FHA), bars discrimination against any person in the terms, conditions, or privileges of sale or rental of a dwelling because of race.<sup>[13]</sup> By passing the FHA, Congress intended to promote racial integration as well as nondiscrimination as national goals.<sup>[14]</sup> However, despite the passage of the FHA, pervasive racial discrimination and segregation exist within the public housing system, particularly in the Section 8 Program.<sup>[15]</sup> One of the major problems with the Section 8 Program is that since participation in it is voluntary, many recipients are unable to find landlords to accept the vouchers.

The discrimination against voucher holders is a general problem. The widespread discrimination reduces the utility of the voucher program, and frustrates the purported goal of the legislation, which is to end housing segregated by race and income.<sup>[15]</sup> In addition, while the refusal to accept the vouchers appears racially neutral on its face, many housing advocates believe that the acceptability and legality of Section 8 discrimination enables landlords to use it as a proxy for other legally prohibited kinds of discrimination, such as that based on race, ethnicity, national origin, gender, family status, or disability.<sup>[15]</sup> For example, studies show that the discrimination against Section 8 voucher holders increases if the recipient is African American or Latino.<sup>[15]</sup>

Thus, the Section 8 Program has not been entirely successful at ending housing segregation. Many recipients end up using their subsidies to pay for their current low-income housing units or move within their own segregated neighborhoods.<sup>[16]</sup> Because of discrimination against voucher holders, many subsidy recipients can only find housing in neighborhoods where they already are in the racial majority.<sup>[16]</sup>

## Disparate Impact Claims to Address Section 8 Housing Voucher Discrimination

One way in which discriminated parties have dealt with discrimination is by bringing disparate impact claims. In disparate impact claims, a prima facie case of discrimination is established by showing that the challenged practice of the defendant actually or predictably results in racial discrimination.<sup>[11]</sup> This analysis focuses on facially neutral policies that may have a discriminatory effect. Federal courts will allow claims to be made under the FHA on a disparate impact theory by analogizing the FHA to Title VII because they both share a goal of reducing discrimination.<sup>[11]</sup>

However, courts are dividing on how they rule when it comes to allowing disparate impact claims under the FHA for voucher discrimination. A few federal courts have allowed plaintiffs who were denied housing because of their vouchers to assert these claims. Other courts have limited or prohibited them. Thus, the courts are not uniform when it comes to addressing disparate impact claims for voucher discrimination. Congress has recognized that refusing to rent to families with children violated the FHA and it should extend that protection to people who use vouchers. Without more legal protections, voucher discrimination can continue and the Section 8 Housing Voucher Program can be in danger of meeting its intended goal of increasing the quantity of options and quality of housing for low-income individuals and families.<sup>[17]</sup>

## References

1. ^ Pub. L. No. 90-284, tit. VIII, 82 Stat. 73, 81-89 (codified as amended at 42 U.S.C. §§ 3601-3631 (2006)).
2. ^ Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. § 5301 (2006)).
3. ^ Rebecca Rotem, "Using Disparate Impact Analysis in Fair Housing Act Claims: Landlord Withdrawal from the Section 8 Voucher Program," 78 *Fordham L. Rev.* 1971, 1972, (2010).
4. ^ See *Graoch Assocs. #33 v. Louisville/Jefferson County Metro Human Relations Comm'n*, 508 F.3d 366, 376 (6th Cir. 2007).
5. ^ Handicap and race are two protected classes under the Fair Housing Act. 42 U.S.C. § 3604.
6. ^ Manny Fernandez, *Despite New Law, Subsidized Tenants Find Doors Closed*, *N.Y. Times*, Sept. 20, 2008, at B1.
7. ^ <sup>a b</sup> Bruce Katz & Margery Austin Turner, *Rethinking U.S. Rental Housing Policy: A New Blueprint for Federal, State, and Local Action*, in *Revisiting Rental Housing: Policies, Programs, and Priorities* 319, 319 (Nicolas P. Retsinas & Eric S. Belsky eds., 2008).
8. ^ <sup>a b c</sup> Evan Anderson, "Vouching for Landlords: Withdrawing from the Section 8 Housing Choice Voucher Program and Resulting Disparate Impact Claims," 78 *U. Cin. L. Rev.* 371, 375 (2009).
9. ^ Sean Zielenbach, *Moving Beyond the Rhetoric: Section 8 Housing Choice Voucher Program and Lower-Income Urban Neighborhoods*, 16 *J. Affordable Housing & Community Dev. L.* 9, 10 (2007).
10. ^ <sup>a b c</sup> Meryl Finkel & Larry Buron, U.S. Dep't of Hous. and Urban Dev., *Study on Section 8 Voucher Success Rates, Quantitative Study of Success Rates in Metropolitan Areas 2-2* (2001).
11. ^ <sup>a b c d</sup> Tamica Daniel, *Bringing Real Choice to the Housing Choice Voucher Program: Addressing Voucher Discrimination Under the Federal Housing Act*, 98 *Geo. L.J.* 769, 776 (2010).
12. ^ 42 U.S.C § 1437(a) (2006).
13. ^ 42 U.S.C. § 3604(b) (2006).
14. ^ John Goering, *Introduction and Overview: Housing, Justice, and the Government*, in *Fragile Rights within Cities: Government, Housing, and Fairness*, 1, 9 (John Goering, ed., 2007). See also Michael H. Schill, *Implementing the Federal Fair Housing Act: The Adjudication of Complaints*, in *Fragile Rights within Cities: Government, Housing, and Fairness*, *supra*, at 143-44.
15. ^ <sup>a b c d</sup> Rebecca Rotem, "Using Disparate Impact Analysis in Fair Housing Act Claims: Landlord Withdrawal from the Section 8 Voucher Program," 78 *Fordham L. Rev.* 1971, 1980, (2010).
16. ^ <sup>a b</sup> Rebecca Rotem, "Using Disparate Impact Analysis in Fair Housing Act Claims: Landlord Withdrawal from the Section 8 Voucher Program," 78 *Fordham L. Rev.* 1971, 1982, (2010).
17. ^ Tamica Daniel, *Bringing Real Choice to the Housing Choice Voucher Program: Addressing Voucher Discrimination Under the Federal Housing Act*, 98 *Geo. L.J.* 769, 793 (2010).

Retrieved from "http://en.wikipedia.org/w/index.php?

title=Discrimination\_in\_awarding\_Section\_8\_housing&oldid=533741362"

Categories: Public housing in the United States | Federal assistance in the United States

| Discrimination in the United States | Affordable housing

- 
- This page was last modified on 18 January 2013 at 20:06.
  - Text is available under the Creative Commons Attribution-ShareAlike License; additional terms may apply. By using this site, you agree to the Terms of Use and Privacy Policy. Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.