



Berkeley Homeless Commission

CONSENT CALENDAR
March 9, 2021

To: Honorable Mayor and Members of the City Council
From: Homeless Commission
Submitted by: Carole Marasovic, Chairperson, Homeless Commission
Subject: Amending Source of Income Discrimination Ordinance to Establish
Administrative Enforcement Procedure

RECOMMENDATION

The Homeless Commission recommends that BMC 13.31 be amended to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income. Such procedure should involve establishing a complaints procedure under an existing City of Berkeley department such as the Department of Planning or Rent Stabilization Board, where a complaint could be filed by a prospective tenant, or tenant, alleging that they have been discriminated against by a landlord, property owner or authorized agent or employee when seeking rental housing or in any other context currently covered under BMC 13.31.

Stage 1 of enforcement in the complaints procedure shall involve the taking of the complaint which shall be investigated by the designated department expeditiously, within a reasonable period of time no longer than ten days. Upon completion of the investigation, a finding shall be made of substantial evidence of discrimination or no evidence of discrimination.

In the process of the investigation, the investigator shall concurrently, while identifying the facts, attempt to resolve the complaint by seeking to bring the parties to agreement that the complaining party be permitted to rent the premises in question or alternatively, if the premises has otherwise been rented prior to the investigation, be provided the first option for the next available vacancy at the premises.

Where the complaint has not otherwise been resolved through this procedure, and there is a finding of substantial evidence, the complaining party shall be offered the opportunity to have its complaint heard by an administrative hearing officer mirroring a procedure or similar to a procedure afforded by BMC 1.28. If the complainant files for such an administrative hearing, and the rental property remains available, the filing for an administrative hearing, shall constitute a stay of the property being otherwise rented to another applicant.

If at the administrative hearing, the administrative law judge, or hearing officer, finds in favor of the complainant, the administrative hearing officer can order that housing be provided to the complainant and/or direct a fine of no more than five thousand dollars (\$5,000) to be paid to the complainant with an additional penalty to the City of Berkeley for the costs of the administrative appeal. This procedure will be a final administrative decision subject to litigation to be brought in a court of law by a complainant through any legal entity, private or public as the complainant can identify.

The Homeless Commission further recommends that any person seeking housing, with a voucher or any subsidy to pay their rent, be considered for the rental in the order which their rental application is received and be entitled to the rental as the first applicant of right. Insufficient credit or poor credit shall not be a fact considered for rental as to the totality of the rent to be paid if the rent is to be otherwise paid through the voucher or subsidy source.

POLICY COMMITTEE RECOMMENDATION

On February 4, 2021, the Land Using, Housing, & Economic Development Policy Committee adopted the following action: M/S/C (Hahn/Droste) to send to Council a qualified positive recommendation to refer to the City Manager to: 1) Draft amendments to the Source of Income Discrimination Ordinance to provide for an administrative procedure to enforce the anti-discrimination property rental ordinance as to source of income, parallel to the Fair Chance Ordinance; 2) Submit to Council in 2022 a report reviewing the effectiveness of the source of income discrimination ordinance in its first five years; and 3) Update and improve information on the City website and elsewhere about legal services for low income residents; and 4) Refer to the 4x4 Committee discussion of feasibility of enforcement of source of income discrimination alongside the fair chance ordinance, and discussion of Homeless Commission's first-in-time standard recommendations.

Vote: All Ayes.

SUMMARY

The current source of income anti-discrimination ordinance has not been enforced because the enforcement provisions are impractical. Amendments to the ordinance will provide for a means of enforcement, through administrative procedures, that will open up housing in Berkeley to persons with Section 8 vouchers, Shelter Plus certificates, VASH vouchers and other subsidies.

Establishing an investigative procedure, prior to an administrative hearing, encourages early resolution of the complaint avoiding additional expense to the landlord/property owner and provides for a timely rental for the complainant.

FISCAL IMPACTS OF RECOMMENDATION

The costs to implement such a program will be substantial and are best calculated by staff. However, implementing an administrative procedure is the only means of

enforcing a law critical to protecting access to rental housing by persons with vouchers and other subsidies.

CURRENT SITUATION AND ITS EFFECTS

On July 25, 2017, Council unanimously passed an ordinance to prohibit discrimination in property rental based on source of income. Since that time, discrimination based on source of income remains pervasive throughout the Berkeley community. The current enforcement provisions in the ordinance are impractical.

The complaining party currently must seek legal redress in court, through a protracted process, when they are only seeking to rent an apartment in a timely manner. An administrative procedure, commencing with an investigation of their complaint, is far more likely to result in an expeditious resolution, concluding in rental.

Even if the complainant wanted to proceed through an untimely litigation route, they would be hard-pressed to identify an attorney to represent them. County counsel or the district attorney, as stated in the current ordinance, would not prioritize such cases. The reference to any other person or entity, in the current ordinance, could include the City Attorney but that undertaking would be excessively burdensome to the City of Berkeley City Attorney, already overstretched with competing demands. This ordinance has not substantially caught fire so as to interest the private bar in bringing these claims.

BACKGROUND

On November 13, 2019, the Homeless Commission voted to pass the recommendation as earlier stated in the recommendation section of this report and herein incorporated by reference.

Action: M/S/C Marasovic/Hill to submit the report on enforcement of source income discrimination to Council as written.

Vote: Ayes: Hill, Marasovic, Kealoha-Blake, Hirpara.

Noes: Mulligan, Behm-Steinberg, Hollyman. *Abstain:* None. *Absent:* None.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects.

RATIONALE FOR RECOMMENDATION

As source of income discrimination continues in Berkeley two years following the adoption of an ordinance prohibiting such, it is clear that the current ordinance is insufficient as to enforcement. An administrative procedure is best in terms of an expeditious resolution.

An increase in a fine, through the administrative procedure, is an incentive for property manager/landlord resolution. The order of an application received is critical because

otherwise, denial is easily justified through a pool of applicants which favors those without vouchers or subsidies. Lack of credit or bad credit can be a basis for denial to a Section 8 voucher/subsidy holder. However, that credit is irrelevant when the voucher or subsidy holder's rent will be largely paid by the funding source.

ALTERNATIVE ACTIONS CONSIDERED

The Commission considered not taking action which would mean that the ordinance is meaningless without lack of enforcement.

CITY MANAGER

See companion report.

CONTACT PERSON

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