

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 8, SECTIONS 98.0801, 98.0802, 98.0803, 98.0804, 98.0805, AND 98.0806, RELATING TO THE PROHIBITION OF DISCRIMINATION BASED ON A TENANT'S SOURCE OF INCOME.

WHEREAS, the City of San Diego is committed to furthering fair housing efforts by promoting fair and equal housing opportunities for its residents, including recognizing both state and federal fair housing laws that address discrimination, and supporting programs that educate the public about the right to equal housing opportunities; and

WHEREAS, one way of promoting fair and equal housing opportunities is to eliminate barriers and increase housing options for tenants that receive rental assistance or financial aid from any federal, state, local, or nonprofit-administered benefit or subsidy program; and

WHEREAS, the largest federal rental assistance program is the Housing Choice Voucher program, commonly known as "Section 8"; and

WHEREAS, Section 8 is a partnership between the federal government and state or local public housing authorities (PHAs), such as the San Diego Housing Commission; and

WHEREAS, the federal government funds the Section 8 program and the PHAs administer it; and

WHEREAS, the PHA identifies low-income renters who are eligible to participate in the Section 8 program, approves the housing they wish to rent, and then enters into a Housing Assistance Payment (HAP) contract with the landlord to pay a portion of the tenant's rent directly to the landlord each month; and

WHEREAS, Government Code section 12955(a) of the California Fair Employment and Housing Act (FEHA) makes it unlawful for the owner of any housing accommodation to discriminate against any person based on that person's source of income; and

WHEREAS, Government Code section 12955(p)(1) defines source of income as "lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant [excluding a landlord]"; and

WHEREAS, based on the definition of source of income in section 12995(p)(1), some landlords refuse to accept Section 8 program recipients as tenants; and

WHEREAS, the City Council wishes to adopt a broader definition of source of income, which includes rental assistance or financial aid from any federal, state, local, or nonprofit-administered benefit or subsidy program, among other sources, so that landlords cannot refuse to rent to Section 8 program recipients; and

WHEREAS, a City ordinance prohibiting landlords from refusing to rent to Section 8 program recipients is not preempted by federal or state law; and

WHEREAS, every section, subsection, sentence, clause, phrase, portion or provision of this Ordinance is intended to be severable pursuant to San Diego Municipal Code section 11.0205; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 9, Article 8 of the San Diego Municipal Code is amended by adding new Division 8, sections 98.0801, 98.0802, 98.0803, 98.0804, 98.0805, and 98.0806, to read as follows:

§98.0801 Purpose and Intent

It is the purpose and intent of this Division to ensure that landlords in the City of San Diego cannot discriminate against any person based on that person's source of income. The California Fair Employment and Housing Act (FEHA), as amended from time to time, makes it unlawful for the owner of any housing accommodation to discriminate against any person based on certain factors, including the person's source of income. FEHA defines source of income as "lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant [excluding a landlord]." This Division defines source of income more broadly to include rental assistance from any federal, state, local, or nonprofit-administered benefit or subsidy program, among other sources. Under this Division, landlords retain their right to reject prospective tenants for other lawful reasons consistent with federal, state, and local laws.

§98.0802 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Source of income means all lawful, verifiable sources of income, or rental assistance from any federal, state, local, or nonprofit-administered benefit or subsidy program, or any financial aid from any rental assistance program, homeless assistance program, security deposit assistance program, or housing subsidy program, whether paid directly to the program participant, landlord, or representative of either.

Rental-unit has the same meaning as in Municipal Code section 98.0720.

Tenancy has the same meaning as in Municipal Code section 98.0720.

§98.0803 Prohibited Activity

- (a) It is unlawful for any person to do any of the following acts, wholly or in part, based on a person's *source of income* (except as may be necessary to comply with any program requirements related to *source of income*):
1. To refuse to enter into or renew an agreement for *tenancy*;
 2. To interrupt or terminate any *tenancy*;
 3. To falsely represent that a *rental-unit* is not available for *tenancy*;
 4. To require inclusion in the terms of an agreement for *tenancy* any clause, condition, or restriction; or
 5. To restrict a tenant's access to facilities or services on real property associated with the *tenancy*, or refuse repairs or improvements to real property associated with the *tenancy*.
- (b) It is unlawful for any person to make, print, publish, advertise, or disseminate in any way, or cause to be made, printed, published, advertised, or disseminated in any way, any notice, statement, or advertisement with respect to a *rental-unit*, or with respect to financing related to a *rental-unit*, which indicates discrimination based on a person's *source of income*.
- (c) It is unlawful for any person to use a financial or income standard for entering into or renewing a *tenancy* that does either of the following:

- (1) Fails to account for any tenant's or prospective tenant's entire *source of income*; or
- (2) Fails to account for the aggregate *source of income* of tenants residing together or proposing to reside together, or the aggregate *source of income* of tenants or prospective tenants and their cosigners or proposed cosigners, on the same basis as the aggregate *source of income* of married persons residing together or proposing to reside together.

§98.0804 Exceptions for Owner-Occupied *Rental-Units*

Nothing in this Division shall apply to any *tenancy* in which the owner or any member of his or her family resides within the same residential building as the tenant and the owner or family member share a bathroom or a kitchen facility with the tenant or prospective tenant.

§98.0805 Effect on Other Laws

Nothing in this Division shall be deemed to permit a transaction in real property that is otherwise prohibited by any applicable law.

§98.0806 Enforcement and Remedies

- (a) An aggrieved person claiming a violation of this Division may file an action against a person in a court of competent jurisdiction for a violation(s) that is alleged to have occurred on or after August 1, 2019, within one year after discovery of the alleged violation.
- (b) An aggrieved person may seek an injunction under this section.

- (c) The court may award monetary damages to an aggrieved person who proves a violation of this Division. If the court determines that a violation occurred during a *tenancy*, then the court shall award to the individual whose rights are violated three (3) times the amount of one month's rent that was being charged for the *rental-unit* at the time of violation. If the court determines that a violation occurred prior to a *tenancy*, then the court shall award to the individual whose rights are violated three (3) times the amount of one month's rent that the landlord advertised for the *rental-unit* at the time of the violation.
- (d) The court may award punitive damages, as well as attorneys' fees and costs of action.
- (e) Nothing in this section shall be interpreted to limit or restrict the City's authority to administer and enforce the provisions of this Division pursuant to Chapter 1 of this Code.
- (f) This Division is not to be construed to limit an aggrieved person's right to bring legal action for a violation of any other laws concerning housing discrimination, or other standards or rights, nor is exhaustion of remedies under this Division a prerequisite to the assertion of any other such right.

Section 2. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
Adam R. Wander
Deputy City Attorney

ARW:nja
07/23/18
Or. Dept: Council District 9
Doc. No.: 1786005_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor