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AMENDMENT 45A
ACTION CALENDAR
July 25, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington

Subject: ADOPT AN ORDINANCE ADDING TO THE BERKELEY MUNICIPAL CODE CHAPTER 13.31 TO ADDRESS THE AFFORDABLE HOUSING CRISIS IN BERKELEY AND INCREASE THE USABILITY OF PROGRAMS THAT SUBSIDIZE HOUSING COST FOR LOW-INCOME TENANTS

RECOMMENDATION

To adopt an ordinance adding to the Berkeley municipal code chapter 13.31 to address the affordable housing crisis in Berkeley and increase the usability of programs that subsidize housing cost for low-income tenants.

BACKGROUND

In our current housing crisis, it has been reported that certain landlords have actively denied renting units to tenants based on their source of income. At the December 1, 2015 Council Worksession, the Berkeley Housing Authority reported that only 1,676 of the possible 1,935 vouchers issued for Berkeley were utilized. Even worse, only 15 of every 100 families that receive a Section 8 Voucher are successful in finding a unit they can rent in Berkeley.

In response to the previous draft ordinance language, we have received recommendations to revise the language as provided for this amended item.

For more information:

1. <https://www.smgov.net/departments/council/agendas/2015/20150505/s2015050507-A.htm>
2. <https://www.smgov.net/departments/council/agendas/2015/20150505/s2015050507-A-1.htm>

ENVIRONMENTAL SUSTAINABILITY:

There are no identifiable environmental impacts or opportunities associated with the subject of this report.

FINANCIAL IMPLICATIONS: Staff time.

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ORDINANCE NO. #,###-N.S.

ADDING TO THE BERKELEY MUNICIPAL CODE CHAPTER 13.31 TO ADDRESS THE AFFORDABLE HOUSING CRISIS IN BERKELEY AND INCREASE THE USABILITY OF PROGRAMS THAT SUBSIDIZE HOUSING COSTS FOR LOW- INCOME TENANTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Title of Chapter 13.31 of the Berkeley Municipal Code is hereby amended to read as follows:

DISCRIMINATION IN PROPERTY RENTAL

Section 2. That a new Section 13.31 of the Berkeley Municipal Code be added to read as follows:

Section 13.31.010 Findings.

A. In the City of Berkeley, it is unlawful to restrict housing choice on the basis of race, color, disability, religion, sex, familial status, national origin, sexual orientation, marital status, ancestry, age, and source of income.

B. The City of Berkeley is committed to providing and preserving fair and affordable housing for all income levels.

C. The City of Berkeley wants to increase the availability of housing to all income levels and eliminate any limitations in the provision of housing, including discrimination based on a person's source of income.

D. City of Berkeley, which administers the Housing Voucher Programs including the Housing Choice Voucher Program, also known as "Section 8," and the Veterans Affairs Supportive Housing Voucher Program reports a shortage of landlords participating in the program. This shortage may reflect discrimination against tenants with Housing vouchers; and discrimination against Housing voucher holders significantly reduces the stock of rental housing that is available to them; and

E. There are more than 300 low-income families, seniors and differently abled individuals that presently homeless that could afford market rents if landlords would allow them to apply for apartments and accept the voucher from one of the many government funded programs. Other jurisdictions in the United States have seen upwards of 12 percent increase in acceptance of Section 8 Housing Choice Vouchers when similar ordinances have been passed barring the refusal to accept Section 8 Housing Choice Vouchers to pay for apartments.

E. California Government Code §12921 prohibits housing discrimination based on source of income as defined by §12955(p)(1), which does not protect Housing Choice voucher holders as established by case law (SABI v. Sterling, 183 Cal.App.4th 916 (2010)); and California and federal law further requires the City of Berkeley to identify impediments to providing affordable housing and to develop strategies for removing those impediments. In order to fulfill its commitment to fair housing, to increase affordable housing opportunities, and to fulfill its legal obligations it is necessary to prohibit housing discrimination based on source of income.

Section 2. That a New Section 13.31.20 is added to the Berkeley Municipal Code to read as follows:

Section 13.31. 20 Discrimination based on source of income prohibited.

It shall be unlawful for any person offering for rent or lease, renting, leasing, or listing any housing accommodation, or any authorized agent or employee of such person, to do or attempt to do any of the following:

A. Refuse to rent or lease a housing accommodation, or access to or use of the common areas and facilities of the housing accommodation, serve a notice of termination of tenancy, commence an unlawful detainer action, or otherwise deny to or withhold from any person or persons, a housing accommodation on the basis of source of income;

B. Represent to any person, on the basis of source of income, that a housing accommodation is not available for inspection or rental when such housing accommodation is in fact available for inspection or rental, or to require different terms for such transactions on the basis of source of income;

C. Make, print, or publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a housing accommodation offered by that person that indicates any preference, limitation, or discrimination with respect to source of income; or

D. To use a financial or income standard for rental housing that:

1. Privileges income earned directly by the tenant or prospective tenant, or rental payments made directly by the tenant or prospective tenant over housing assistance.
2. Discounts or discriminates against housing assistance payments.
3. 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 on the same basis as the aggregate income of married persons residing together or proposing to reside together.

E. Criminal penalty.

1. Any person who violates any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period not exceeding six months, or both.

F. Civil liability.

1. Any person who violates any of the provisions of this chapter or who aids in the violation of any provisions of this chapter is liable for, and the court must award to the individual whose rights are violated, three times the amount of special and general damages, or, in the case of unlawful discrimination in the rental of a unit, three times the amount of one month's rent that the landlord charges for the unit in question. The court may award in addition thereto not less than two hundred dollars (\$200.00) but not more than four hundred dollars (\$400.00), together with attorney's fees, costs of action, and punitive damages. Civil actions filed pursuant to this section must be filed within one year of the alleged violations.

2. Any person who violates any provision of this chapter or who aids in the violation of any provision of this chapter shall be liable for a separate civil action for each provision of this chapter that he or she violates, and for each instance in which he or she violates a provision of this chapter.

G. Civil Injunction.

1. Any person who commits, or proposes to commit, an act in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.

2. An action for injunction under this section may be brought by any aggrieved person, by county counsel, the district attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

H. Severability.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

I.No Conflict with State or Federal law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. Nothing in this chapter shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

J. Definitions.

1. The word "person" as used in this chapter means any individual, firm, corporation, or other organization or group of persons however organized.

2. "Source of income" includes any lawful source of income or rental assistance from any Federal, State, local or non-profit-administered benefit or subsidy program including, but not limited to, the Section 8 voucher program.

Section 4. Posting.

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library, and the title shall be published in a newspaper of general circulation.