



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Mark Washington Director, Human Resources and Civil Service *mw*

**DATE:** September 10, 2014

**SUBJECT:** Response to Resolution No. 20140417-048 - Source of Income (CIUR 1296)

---

### **BACKGROUND:**

Resolution No. 20140417-048 charged the Department of Human Resources, the Law Department, Equal Employment Office/Fair Housing Division EE/FHO, and the Neighborhood Housing and Community Development department (NHCD) with the responsibility of hosting stakeholder meetings and developing a recommendation to amend Chapter 5-1 of the City Code to prohibit discrimination based on "Source of Income."

Prior to drafting the ordinance, the EE/FHO coordinated two meetings to receive stakeholder input, as directed by Council. During these meetings, staff presented information to explain the process, purpose, and scope of work that would be completed in an effort to provide Council with the proposed ordinance amendment as requested. At the end of the presentation, stakeholders were provided an opportunity to provide input.

### **STAKEHOLDER PROCESS/INPUT:**

Staff from EE/FHO presented the draft amendment to the Human Rights Commission (HRC) on July 28, 2014, and to the Community Development Commission (CDC) on August 12, 2014. The HRC voted in favor of the draft amendment with no changes. The CDC added language to further protect tenants, and submitted a draft to Council. Staff from EE/FHO also presented to the Commission on Veterans Affairs (information only) on August 19, 2014.

Some speakers were present opposing the proposed code amendment; they indicated that they were representing themselves and the interest of numerous property owners. Supporters of the proposed code amendment also attended and shared their feedback. A listing of all the speakers, the feedback received, and the number of people in attendance at the stakeholder meetings is attached.

**RECCOMENDATION:**

Staff from NHCD and EE/FHO worked with the Law department to draft a concise Code amendment that would add "Source of Income" to existing protections, and define "Source of Income" as any lawful, verifiable income but not including future gifts. Staff has given careful consideration to all of the concerns expressed. As a result, staff is recommending an amendment written in simple, broad terms that will allow EE/FHO to work with the Law Department to develop balanced, reasonable interpretations based on actual cases as they occur. A copy of the draft amendment is also attached.

cc: Marc A. Ott, City Manager  
Assistant City Managers  
Betsy Spencer, Director, Neighborhood Housing & Community Development  
Karen Kennard, City Attorney, Law Department

Attachments



## Proposed Code Amendment: Fair Housing Source of Income Protected Class Back-Up Documentation

### **Background**

Two meetings were held to receive Stakeholder Input as directed by Council on April 17, 2014. The majority of the input came from the two primary stakeholder groups: landlords (property owners and managers), and tenants, many of whom identified as voucher holders. In addition, there were representatives from internal and external community groups (COA Community Development Commission, Ending Community Homelessness Coalition, HousingWorks, etc.).

Listed below is an Overview of the Stakeholder feedback.

### **Stakeholder Feedback – In Support**

- Tenants who hold vouchers expressed substantial challenges and difficulties they experience when they try to locate apartments that will accept vouchers as a form of rental payment.
- Voucher holders prefer fair housing protections in the Code that are as broad as possible, allowing them the greatest housing choice possible.
- The Austin Tenants' Council opposed any deviation from existing coverage provisions presented to council, as this would only reduce the number of available units to voucher holders and perpetuate the existing housing availability issues.
- Texas Rio Grande Legal Aid (TRGLA) is in support of adding the protected class, but they drafted an alternative code amendment proposal that is more complex and detailed to ensure the greatest coverage possible, and limit landlord defenses. TRGLA presented their draft amendment at the first public meeting. After the staff amendment was drafted, TRGLA presented their draft again at the Community Development Commission (CDC) meeting, and CDC adopted a recommendation to Council endorsing some of the provisions in the TRGLA proposal.

### **Stakeholder Feedback – In Opposition**

- Landlords generally opposed any protections and urged limited coverage of any added protections.
- Feedback from landlords included whether coverage should exempt small complexes or owners because of the presumed burden and cost of administering voucher programs.
  - Special Note - None of the landlords were able to quantify the additional cost with an actual dollar figure but rather stated that the added cost of doing business necessarily had to be passed on in the form of increased rents for everyone).

- The various standards proposed by the landlords included exemptions from coverage for buildings ranging from 5 or fewer units up to 50 or fewer units.
  - Special Note - Proposing coverage to begin at complexes with 50 or more units (or any coverage exemption different from current provisions) may be a tempting policy to exempt small landlords, but it does not take into account the very high occupancy rates currently in the rental market. Some estimates are that occupancy is currently at 95%, meaning that the added 80,000 units that would be available if coverage was limited to complexes with 50 or more would actually add only an approximate 4,000 vacant units to the stock of housing for voucher holders.
- Another consideration discussed for the purpose of establishing Source of Income coverage was to exempt older properties that may not be able to pass the structural inspection standards of the various voucher programs.
  - Special Note - Staff believes that this can be accomplished on a case-by-case basis if and when a complaint is filed, because voucher holders may accept that the landlord is not discriminating if his property fails an inspection that causes the landlord not to accept the voucher. The voucher holder in that situation may never file a complaint.
  - Special Note - Current coverage provisions in the Code vary between single-family and multi-family dwellings. An owner of one to three single-family homes is not covered, but an owner of four or more single-family dwellings is covered. All multi-family dwellings are covered, unless the owner occupies one of the units, but this exemption does not apply if the building has five or more dwelling units.
  - Special Note - All owners regardless of the number of units they own are prohibited from making discriminatory statements. Therefore, an otherwise exempt owner would be prohibited from an advertisement with the customary “No Section 8” statement.
- Landlords expressed concerns that adding Source of Income as a protected class would increase their risk, because voucher holders do not have assets that can be recovered in the event of lease default.
- Landlords also expressed concern that the Housing Choice Voucher (HCV) program (formerly “Section 8”) requires certain structural elements that are not present or feasible in many older properties. The HCV program also requires certain appliances to be provided by the landlord, something that many landlords do not currently provide.
- Some property owners expressed strong resistance to being compelled to sign the required contracts to participate in the HCV program and other voucher programs. One property owner said that he would sell his properties to avoid signing a contract with the U.S. Dept. of Housing and Urban Development (HUD), and another landlord said that he is in the process of selling his rental properties.
  - Special Note - The contract a landlord must sign to participate in the HCV program and receive payment is referred to as the Housing Assistance Payment, or “HAP,” contract. In Austin, landlords sign this contract with the Housing Authority of the City of Austin (HACA), the local housing authority. Landlords

stated that the HAP contract prevents them from seeking recovery for tenants who break the lease. For example, one landlord stated that the HAP contract terminates if the family breaks up. The landlords generally stated that the lease terminates upon any condition that terminates the HAP contract. Under a conventional lease, the tenant would remain liable for the full amount due under the lease.

- The Austin Apartment Association (AAA) representative predicted three different cost effects of adding this protection:
  1. Increased rents to recover the costs of administration by landlords;
  2. Increased costs to the City of Austin to investigate new complaints that are not reimbursable under federal law and our agreement with HUD to investigate federal equivalent discrimination complaints; and
  3. The indirect cost of discouraging new development because of the adverse regulatory environment.
- The AAA representative suggested that the City should be willing to reimburse landlords who suffer losses as a result of accepting vouchers or the costs of delays that result from waiting for HACA to conduct inspections.
- The representative from the Austin Board of Realtors (ABOR) suggested that a voluntary program with tax credit incentives would be better than the mandatory program under consideration.
- An independent landlord stated that HACA formerly provided financial assistance for costs, and landlords used to beg for voucher holders. This same landlord stated his belief that the risk of lease default is actually lower for voucher holders, and he suggested coverage only for new owners who purchase a property after this amendment passes, effectively “grandfathering” all existing property owners.

## **Total Attendance Public Meeting June 4, 2014: 21**

### **Speaking For:**

Kathy Stark, Austin Tenants' Council  
Ann Howard, ECHO  
Rufus Jones, Citizen, Voucher Holder  
Fred Fuchs, Texas Rio Grande Legal Aid (TRGLA)  
Nelson Mock, TRGLA  
Cameron Dorsey, Texas Dept. of Housing and Community Affairs (TDHCA)(Texas State Agency)  
Mitchell Rappaport, Disability Advocate  
Mandy DeMayo, Executive Director, HousingWorks Austin

### **Speaking Against:**

Rachel Fischer, Austin Apartment Association (AAA)  
Jim Lloyd, Landlord  
Bob Thompson, Landlord & AAA Member

**Speaking On** (neither for or against but serving only as a resource):

Lisa Garcia, Housing Authority of the City of Austin

## **Total Attendance Public Meeting June 11, 2014: 25**

### **Speaking For:**

Karen Paup, Vice Chair, Austin Community Development Commission  
Bob Kafka, Citizen, Disability Advocate  
Heiwa Salovitz, Citizen, Disability Advocate  
Kathy Stark, Austin Tenants' Council  
Brian McGivern, Texas Civil Rights Project  
Jennifer McPhail, Citizen, Disability Advocate  
Nancy Crowther, City of Austin Pedestrian Advisory Council, Disability Advocate  
Stephanie Thomas, Citizen, Disability Advocate

### **Speaking Against:**

Bill Evans, Austin Board of Realtors (ABOR)  
Andrei Lubomudrov, ABOR  
Rachel Fischer, Austin Apartment Association (AAA)  
Jim Lloyd, Landlord  
Bob Thompson, Landlord & AAA Member

### **Speaking On:**

Lisa Garcia, Housing Authority of the City of Austin

## **Austin Human Rights Commission Regular Meeting July 28, 2014**

### **Speaking For:**

Kathy Stark, Austin Tenants' Council  
Jennifer McPhail, Citizen, Disability Advocate  
Heiwa Salovitz, Citizen, Disability Advocate  
Stuart Hersh, Consultant, Not For Profit Housing Providers  
Jan Bezant, Citizen  
Preston Petty, Citizen

### **Speaking Against:**

Andrei Lubomudrov, ABOR  
Rachel Fischer, Austin Apartment Association (AAA)  
Bob Thompson, Landlord & AAA Member

## **Austin Community Development Commission Regular Meeting August 12, 2014**

### **Speaking For:**

Glen Moss, local Realtor

Stephanie Thomas, ADAPT & Accessible Housing Austin  
Bob Kafka, ADAPT  
Ann Howard, Ending Community Homelessness Coalition (ECHO)  
Dennis Saenz, ADAPT  
Dolores Carrillo, ADAPT  
Albert Metz, ADAPT  
Stuart Hersh, Consultant, Not For Profit Housing Providers  
Jennifer McPhail, Citizen, Disability Advocate  
Victor Macyra, ADAPT  
Heiwa Salovitz, Citizen, Disability Advocate  
Kathy Stark, Austin Tenants' Council  
Fred Fuchs, Texas Rio Grande Legal Aid  
Tanya Lavelle, Senior Manager of Advocacy, Community & Housing Services, Easter Seals  
Central Texas  
Mandy DeMayo, Executive Director, HousingWorks Austin

**Speaking Against:**

Bob Thompson, Landlord & AAA Member  
Rachel Fischer, Austin Apartment Association (AAA)  
Andrei Lubomudrov, ABOR

**Speaking On:**

Lisa Garcia, Housing Authority of the City of Austin

**Other:**

Gayle Humble (signed up but left before speaking)  
Linda Thompson (donated time to Bob Thompson)  
Gus Villegas, Austin Apartment Association (donated time to Rachel Fischer)

## **Austin Commission on Veterans Affairs Regular Meeting August 19, 2014**

EEFHO briefed the board and answered questions. No citizens spoke. The board took no action.

**ORDINANCE NO.**

**AN ORDINANCE AMENDING CITY CODE CHAPTER 5-1 RELATING TO SOURCE OF INCOME AND HOUSING DISCRIMINATION.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** City Code Chapter 5-1 Article 1 (*General Provisions*) is amended to add “source of income” to read as follows:

***ARTICLE 1. GENERAL PROVISIONS***

**§ 5-1-1 DECLARATION OF POLICY**

- (A) It is the policy of the City to bring about through fair, orderly and lawful procedures, the opportunity of each person to obtain housing without regard to race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, [ø] age, or source of income.
- (B) This policy is established upon a recognition of the inalienable rights of each individual to obtain housing without regard to race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, [ø] age, or source of income; and further that the denial of such rights through considerations based on race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, [ø] age, or source of income, is detrimental to the health, safety and welfare of the inhabitants of the City and constitutes an unjust denial or deprivation of such inalienable rights which is within the power and the proper responsibility of the government to prevent.

**§ 5-1-2 SCOPE**

- (A) To provide a procedure for investigating and settling complaints of discriminatory housing practices which are violations of state and federal law, to provide rights and remedies substantially equivalent to those granted under federal law and to permit the director to accept referrals of complaints from the Secretary of Housing and Urban Development and from the Civil Rights Division of the Texas Workforce Commission. Article 2 (*Discrimination in Housing – Fair Housing Act Compliance*) prohibits discrimination in housing on the basis of race, color, sex, religion, disability, familial status or national

1 origin and establishes procedures to enforce the provisions of federal and state  
2 law.

- 3 (B) Even though federal law protects individuals against discrimination in housing  
4 based on race, color, sex, religion, disability, familial status or national origin,  
5 it is the policy of the City that no person should be denied opportunity to  
6 obtain housing on the basis of creed, student status, marital status, sexual  
7 orientation, gender identity, [ø] age, or source of income.

8 **PART 2.** City Code Section 5-1-13 (*Definitions*) is amended to add a definition of  
9 “source of income” and to renumber accordingly.

10 SOURCE OF INCOME means lawful and verifiable income including,  
11 but not limited to, housing vouchers and other subsidies provided by  
12 government or non-governmental entities, child support, or spousal  
13 maintenance, but does not include future gifts.

14 **PART 3.** City Code Sections 5-1-51 through 5-1-54, and 5-1-56 through 5-1-57 in  
15 Chapter 5-1 Article 2 Division 3 (*Prohibitions Against Discrimination*) are amended to  
16 add “source of income” to read as follows:

17 ***DIVISION 3. PROHIBITIONS AGAINST DISCRIMINATION***

18 **§ 5-1-51 DISCRIMINATION IN SALE OR RENTAL OF HOUSING.**

- 19 (A) A person may not refuse to sell or rent a dwelling to a person who has made a  
20 bona fide offer; refuse to negotiate for the sale or rental of a dwelling; or  
21 otherwise make unavailable or deny to a dwelling to any person based on race,  
22 color, religion, sex, sexual orientation, gender identity, age, familial status,  
23 disability, marital status, student status, creed, [ø] national origin, or source of  
24 income.
- 25 (B) A person may not discriminate against a person in the terms, conditions, or  
26 privileges of sale or rental of a dwelling or in providing services or facilities in  
27 connection with the sale or rental, based on race, color, religion, sex, sexual  
28 orientation, gender identity, age, familial status, disability, marital status,  
29 student status, creed, [ø] national origin, or source of income.
- 30 (C) This section does not prohibit discrimination against a person because the  
31 person has been convicted under federal law or the law of any state of the  
32 illegal manufacture or distribution of a controlled substance, but does not  
33 permit discrimination based on a disability.
- 34

1       **§ 5-1-52 PUBLICATION INDICATING DISCRIMINATION**

2           A person may not make, print, or publish or cause to be made, printed, or  
3 published any notice, statement, or advertisement with respect to the sale or rental of a  
4 dwelling that indicates any preference, limitation, or discrimination based on race, color,  
5 religion, sex, sexual orientation, gender identity, disability, age, familial status, marital  
6 status, student status, creed, [ø] national origin, or source of income, or an intention to  
7 make such a preference, limitation, or discrimination.

8       **§ 5-1-53 AVAILABILITY FOR INSPECTION, SALE, OR RENTAL**

9           A person may not represent to a person based on race, color, religion, sex, sexual  
10 orientation, gender identity, disability, age, familial status, marital status, student status,  
11 creed, [ø] national origin, or source of income that a dwelling is not available for  
12 inspection, sale or rental when the dwelling is available for inspection.

13       **§ 5-1-54 ENTRY INTO NEIGHBORHOOD**

14           A person may not, for profit, induce or attempt to induce a person to sell or rent a  
15 dwelling by representations regarding the entry or prospective entry into a neighborhood  
16 of a person of a particular race, color, religion, sex, sexual orientation, gender identity,  
17 disability, age, familial status, marital status, student status, creed, [ø] national origin, or  
18 source of income.

19       **§ 5-1-56 RESIDENTIAL REAL ESTATE RELATED TRANSACTIONS**

20           (A) A person whose business includes engaging in residential real estate related  
21 transactions may not discriminate against a person in making a real estate  
22 related transaction available or in the terms or conditions of a real estate  
23 related transaction because of race, color, religion, sex, sexual orientation,  
24 gender identity, disability, age, familial status, marital status, student status,  
25 creed, [ø] national origin, or source of income.

26           (B) In this section “residential real estate related transaction” means:

27               (1) Making or purchasing loans or providing other financial assistance:

28                       (a) To purchase, construct, improve, repair, or maintain a dwelling; or

29                       (b) Secured by residential real estate; or

30               (2) Selling, brokering, or appraising residential real property.

31

