

Memo

To: All Members, Bellingham City Council
From: Mark Gardner, Legislative Analyst
CC: Rick Sepler, Kurt Nabbefeld, Planning Department; Peter Ruffatto, Legal Department
Date: 06/12/17
Re: Rental process regulations summary

Tenant Protection Regulations

Current rental conditions in the I-5 corridor, including Bellingham, are punishing to renters -- including low vacancy rates, rapidly rising rents, and a seller's market for units. Renters are facing increasing difficulty in finding places to lease, especially lower income renters or those who have weaknesses of any sort that might be revealed upon a background check. This is in turn prompting efforts by localities to mitigate some of these issues through local regulations. This memo briefly reviews regulations in three areas: source of income discrimination; cost of move-in fees; and notification of tenant rights upon move-in.

1. Source of Income Discrimination (SOL) Ordinances. Source of income discrimination ordinances target practices of some rental owners or management companies that refuse to rent to individuals or families whose rent payments are derived from certain governmental or non-conventional sources. A common form of discrimination is refusing to rent to individuals who use Section 8 housing vouchers funded by the federal government and distributed by approved local housing agencies. Such discrimination may lead to persons of minority race or ethnicity, or low income persons generally, to be concentrated in neighborhoods offering fewer opportunities. Research has shown that source of income discrimination laws have modest positive effects on broadening neighborhood choice, and on the likelihood of residing in a neighborhood with a lower level of poverty.¹ More importantly, in the current renting environment, such laws can help facilitative people having access to any rental property, at all.

The current rental environment also impacts efforts to tackle homelessness. Many areas, including Bellingham, embrace a "rapid re-housing" strategy that relies heavily on tenant-based rental assistance. With fewer owners accepting vouchers, the 90 day limit on a voucher may expire before a person finds housing. Inability to obtain housing in a timely manner makes it more difficult for individuals to find or retain employment, and also impacts family stability and the ability of children to focus on school.

Data from up and down the I-5 corridor indicate that voucher holders are having increased difficulty finding available rental properties. For example, data compiled for the City of Vancouver, WA, indicate that the number of landlords participating in Section 8 dropped

22% between 2010 and 2015.² In Whatcom County, the number of owners/managers participating in Section 8 dropped by 20% between 2013 and 2017.³

Landlords or managers who discriminate against holders of vouchers may do so for a number of reasons. According to one review of this issue, “Some landlords wish to avoid the administrative burden associated with the voucher program. Other landlords perceive voucher recipients to be undesirable tenants and/or fear their other tenants would object to voucher recipients as neighbors.”⁴

A bill (SB 5407) was introduced in the Washington State Senate in 2017 to enact SOI non-discrimination provisions, although the bill has not yet advanced in the House. Existing City of Bellingham code (Chapter 10.48 Fair Housing Practices) prohibits discrimination against legally defined protected classes (race, color, religion, ancestry, national origin, marital status, age, familial status, disability, or sex), but no provision is in place regarding source of income.

A number of jurisdictions (e.g. Seattle) have had regulations on the books for some time prohibiting refusal by rental owners or management companies to rent to Section 8 households on the basis of income source alone. More recently, other sources of income are emerging as not being accepted by landlords, including veteran’s vouchers, disability payments, and Social Security. A number of cities are passing SOI non-discrimination laws, and some are broadening their focus to add other sources of income that are to be deemed acceptable. In Washington State, Auburn, Bellevue, King County, Kent, Kirkland, Olympia, Redmond, Renton, Seattle, and Vancouver have SOI ordinances in place. Currently, 14 states have laws on the books, and at least 60 local jurisdictions in the U.S. have regulations in place barring discrimination on the basis of at least one source of income.⁵

Another issue that may work against renters with vouchers is the formula used to calculate whether renters meet income adequacy standards. For example, landlords may have requirements that tenant income must be some multiple of the monthly rent. While not changing the income adequacy formulas directly, a few ordinances have stipulated how voucher income or other assistance must be accounted for in income adequacy calculations. Examples of approaches drawn from national and Washington State measures are discussed below.

Definition of acceptable income. Ways of stipulating income types that are to be deemed allowable vary. For example, Pittsburgh’s approach is to add “Source of Income” to their list of protected classes.⁶ Pittsburgh’s source of income definition is as follows: “All lawful sources of income or rental assistance program, including, but not limited to, earned income, child support, alimony, insurance and pension proceeds, and all forms of public assistance including federal, state and local housing assistance programs. This includes the Section 8 Housing Choice Voucher Program.”⁷ Vancouver, WA’s ordinance, passed in 2015, requires the following to be counted as acceptable: “income derived from social security, supplemental security income, other retirement programs, and any federal, state, local, or

nonprofit-administered benefit or subsidy programs, including housing assistance, public assistance, and general assistance programs.” Definitions used in Kent, and in a pending Senate bill, are virtually identical, as is Auburn’s, although Auburn excludes “nonprofit-administered benefit” programs from its definition. Seattle’s ordinance adds unemployment benefits and Refugee Cash Assistance to its list of acceptable rent sources.⁸ Washington, D.C.’s ordinance includes alimony in the definition.⁹ Conversely, Ann Arbor uses a blanket and very broad definition: “Source of income. Any legal source from which a person obtains money.”¹⁰ Note that ordinances in Kirkland, Redmond, and Bellevue include only Sec. 8 in their anti-discrimination definition. Additional legal and implementation research would be needed to decide whether a definition to be used should be general and inclusive, or whether it should specifically enumerate categories of income or assistance.

Income adequacy calculations. Even if owners accept vouchers or similar rent subsidies, other factors may come into play that affect whether households with rental assistance can find housing. Some landlords or management companies require that total monthly income exceeds a certain multiple of the monthly rent. A few Washington ordinances stipulate how income calculations are to be made in order to make it more likely that households will qualify. Vancouver’s ordinance reads: “If income screening criteria are elected to be used, any source of income in the form of a rent voucher or subsidy must be subtracted from the total of the monthly rent prior to calculating if the income criteria have been met.” Auburn has a similar provision. Seattle’s ordinance, passed in 2016, requires that “Any payment from a Section 8 or other subsidy program that reduces the amount of rent for which the tenant is responsible must be subtracted from the total of the monthly rent.” Since voucher holder incomes are generally low, and voucher amounts can cover a relatively high proportion of rent costs, this method leads to a larger number of households qualifying.

Enforcement. Most local ordinances of this type are enforced by complaint. Voluntary compliance is usually attempted, after which an escalating series of penalties may be invoked. Some housing professionals report that these ordinances generally work as intended as they greatly reduce the incidence of outright discrimination, and also because larger property management companies change their practices to avoid legal entanglements over enforcement. Outreach is important to both landlords and tenants in gaining compliance. In some cities, community groups or legal or renter advocates assist with education and enforcement. Monitoring is assisted by Washington State “Fair tenant screening” provisions, enacted in 2012, that require landlords to list in writing the reason they are not renting out a unit to a particular applicant. According to that law, “If a prospective landlord takes an adverse action, the prospective landlord shall provide a written notice of the adverse action to the prospective tenant that states the reasons for the adverse action.”¹¹ Also, educating landlords regarding the availability of assistance to tenants from local housing agencies in meeting requirements of any lease may also enhance compliance. There are a number of possible models for enforcing of this type of ordinance, and additional research would be needed on what method of enforcement would work best for Bellingham.

Other provisions. Some cities include language to make it clear that units not eligible for vouchers are not included in any requirements. Non-discrimination only applies to a “qualifying unit.” For example, if rent is over income limits for various programs, the unit is not subject to regulatory oversight for source of income. Conversely, since participation in Section 8 first requires a property inspection, Auburn adds the following provision: “Refusal to allow a health and safety inspection of the property by a public housing authority or subsidy program inspector shall not be considered a legitimate basis for refusing to rent due to program ineligibility.” Some ordinances make it clear that other legitimate reasons can be invoked to deny housing to voucher holders – such as a tenant’s prior history of violence as revealed in a criminal record search.¹² Lastly, most SOI ordinances do not apply to rental of a room in an owner-occupied unit.

2. Move in fee ordinance. The City of Seattle has passed an ordinance designed to lessen the impact of up-front costs on renters.¹³ This is particularly an issue for Seattle since many owners, particularly those who newly purchase a building, are raising rents dramatically. When people try to move, the accumulation of up-front costs of moving may be prohibitive, putting such individuals into unstable housing situations, or into homelessness. Seattle’s ordinance includes limits on the amount of a security deposit and of non-refundable fees, and provisions for setting up payment plans for allowable fees. Seattle’s ordinance does the following:

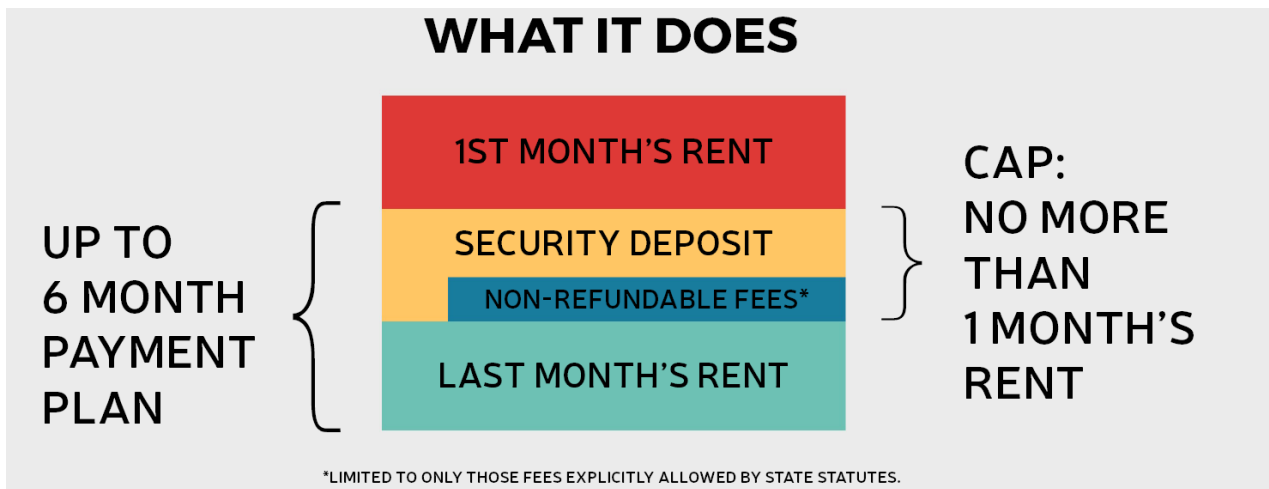
Fees:

- The total amount of the security deposit plus any non-refundable move-in fees may not exceed one month’s rent
- The cost of tenant screening cannot exceed the cost of the screening reports
- If a tenant has paid a non-refundable cleaning fee, cleaning costs cannot later be deducted from the security deposit
- Total non-refundable move-in fees cannot exceed ten percent of the rent (this does not include the cost of any screening reports)
- No deposit can be collected unless the rental agreement lays out the condition and existing cleanliness of the rental unit
- A pet damage deposit cannot exceed 25% of one month’s rent
- Non-refundable move-in fees are limited to screening reports, including criminal background checks and credit reports, and cleaning fees

Payment plans:

- For tenants with leases, a 6 month payment period is authorized for last month’s rent, security deposit, and non-refundable fees
- For tenancies fewer than 6 months, up to 4 equal payments can be made
- With month-to-month leases, fees can be paid in two equal installments
- A pet damage deposit can be paid in three equal monthly installments

The following graphic illustrates the basic framework of the ordinance.



Source: City of Seattle

Note that while SOI laws or ordinances have been in place for some time and have generally survived legal scrutiny, measures regulating up-front rental costs are less common. Seattle's recently-passed ordinance has drawn a lawsuit, which remains pending.¹⁴ As such, further legal analysis of this issue would be necessary before considering any version of this type of ordinance.

3. Tenant's Rights Information. A number of cities have established requirements that tenants be informed of their rights at lease-up, or at other stipulated intervals. For example, Ann Arbor, MI requires distribution of a "Rights and Duties of Tenants" booklet as a provision of its City Charter. Failure of a rental owner or manager to distribute the booklet may result in a fine of \$500. The booklet contains information written by the City, as well as information written by advocates of tenants, and of rental owners.¹⁵ Seattle requires that an "Information for Tenants" publication be distributed to each prospective tenant, and to existing tenants when a lease is renewed.¹⁶

City of Bellingham Code, Chapter 6.15 Rental Registration and Safety Inspection Program, includes the following language:

Information to Be Provided to Tenant and Others. The landlord or his or her authorized representative must provide to each new tenant, at the time the lease or rental agreement is signed or the tenancy otherwise commences, written information regarding tenant rights and resources. The director is authorized to publish the written information to be provided to the tenant under this subsection and shall make such information available to landlords for this purpose. The director will also provide and advertise a website for owners, property managers and tenants regarding rental resources, laws and rights and responsibilities. The

director is further authorized to create outreach and instructional classes for owners, property managers and tenants regarding requirements of this program.

Tenant and owner rights information, and information on other useful topics, is currently available on the City of Bellingham web pages at:

<https://www.cob.org/services/housing/pages/landlord-tenant.aspx>

City Planning staff are in the process of amending the Certificate of Registration that is required to be posted in each rental unit to add a link to this rental information web page, and are also developing a card that would be distributed at time of inspection containing basic information for tenants and a link to web resources.

NOTES

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- ¹ Lance Freeman and Yunjing Li, 'Do Source of Income (SOI) Anti-Discrimination Laws Facilitate Access to Better Neighborhoods?', paper presented at the Association of Public Policy and Management Fall Research Conference, November, 2012, https://appam.confex.com/appam/2012/webprogram/ExtendedAbstract/Paper2465/Freeman_Li_APPAM_paper.pdf;
- Martha Galvez, "Defining Choice in the Housing Choice Voucher Program: The Role of Market Constraints and Household Preferences in Location Outcomes," PhD Dissertation, Robert F. Wagner School of Public Service, New York University, 2011.
- ² Source of Income Protection brief, updated July 7, 2015.
- ³ Data from Bellingham Whatcom Housing Authority. Participating properties dropped from 415 in 2013 to 330 in 2017.
- ⁴ Lance Freeman and Yunjing Li, 'Do Source of Income (SOI) Anti-Discrimination Laws Facilitate Access to Better Neighborhoods?'
- ⁵ Poverty and Race Research Action Council, "Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination," May 2017, <http://www.prrac.org/pdf/AppendixB.pdf>.
- ⁶ City of Pittsburgh, Chapter 659.03 – Unlawful Housing Practices
- ⁷ City of Pittsburgh, Chapter 651.04 - Definitions
- ⁸ City of Seattle Municipal Code, Chapter 14.08 – Unfair Housing Practices, https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT14HURI_CH14.08UNHOPR
- ⁹ District of Columbia, Office of Human Rights, "'Source of Income' Discrimination in Housing," OHR Guidance No. 16-01, https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/OHRGuidance16-01_SourceofIncome_FINAL.pdf
- ¹⁰ Ann Arbor City Code Ch. 112, § 9:150
- ¹¹ Revised Code of Washington 59.18.257, "Screening of prospective tenants," <https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.257>
- ¹² For example, See City of Redmond, Municipal Code Chapter 6.38.
- ¹³ City of Seattle, Legislative Summary, CB 118817, An ordinance related to residential rental properties, <https://seattle.legistar.com/View.ashx?M=F&ID=4911784&GUID=0774A946-1334-4C94-B7EE-44B1DFFDFB45>
- ¹⁴ Mike Rosenberg, "Landlords to sue over Seattle cap on move-in fees for renters," *Seattle Times*, May 30, 2017, <http://www.seattletimes.com/business/real-estate/landlords-suing-over-seattle-cap-on-move-in-fees-for-renters/>
- ¹⁵ City of Ann Arbor, "Rights and Duties of Tenants," http://www.danshouses.com/Dans_Houses_Tenants_Duties.pdf
- ¹⁶ City of Seattle, Department of Construction and Inspections, "Information for Tenants," March 2017, https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpdd016420.pdf