ORDINANCE NO. 2018-02-004

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, AMENDING TITLE 6 OF THE BELLINGHAM MUNICIPAL CODE BY ADOPTING THREE NEW CHAPTERS PROHIBITING SOURCE OF INCOME DISCRIMINATION IN RESIDENTIAL RENTAL HOUSING, INCREASING THE NOTICE PERIOD PRIOR TO SUBSTANTIAL RENT INCREASES, AND INCREASING THE NOTICE PERIOD PRIOR TO TERMINATION OF RESIDENTIAL TENANCIES

WHEREAS, the City of Bellingham is experiencing a heightened demand for rental units and very low vacancy rates, especially for affordable units; and

WHEREAS, based on Housing and Urban Development/United States Postal Service data, the overall residential vacancy rate for Bellingham has shown a steady decline over the past five years from 3.07% in 2013 to 1.79% for first quarter 2017; and

WHEREAS, recent reports by housing experts indicate that the vacancy rate for residential rental units has recently dropped even lower than the rates identified above; and

WHEREAS, extremely low vacancy rates have enabled substantial rent increases, putting some tenants at risk of displacement; and

WHEREAS, on May 22, June 5, June 19, and July 10 of 2017 the Council Planning Committee received information and presentations regarding access issues affecting renters in Bellingham, discrimination facing renters who receive Section 8 and other forms of subsided income, and the need for other protections for renters in Bellingham; and

WHEREAS, protections are necessary for those who receive income subsidies to ensure an ability to locate rental housing due to the vulnerability of these individuals and families; and

WHEREAS, the Bellingham Housing Authority("BHA") and other non-profit entities provide inspection services associated with the use of Housing Choice Vouchers (also known as Section 8 vouchers) and other housing subsidies; and

WHEREAS, federal rules governing the BHA state that to the extent practicable initial inspections must be completed within 15 days of the unit being ready; and

WHEREAS, the BHA and other non-profit entities have indicated that they are committed to completing initial inspections as soon as practicable and within 10 days of the unit being ready to the extent possible; and

WHEREAS, the BHA has indicated that it is actively reviewing processes to shorten the inspection timeline; and

WHEREAS, the BHA acknowledges a shared interest with property owners and prospective tenants in completing the initial inspection in the most timely manner; and

WHEREAS, an increased notice period for substantial rent increases is necessary to afford individuals and families more time to make adjustments to pay the higher rent or to locate other housing; and

WHEREAS, an increased notice period for no fault termination is necessary to afford individuals and families more time to locate other housing; and

WHEREAS, rental owners will remain able to evict without an extended notice if the termination is for cause, such as nonpayment of rent or violation of lease provisions; and

WHEREAS, the City has indicated that it will provide information on landlord/tenant rights and responsibilities to both tenants and property owners through its Rental Registration and Safety Inspection Program; and

WHEREAS, the Council intends to schedule, approximately 12 months following adoption of this ordinance, an agenda item at a regularly scheduled Council meeting, to invite interested parties to such meeting, and to discuss this Ordinance's effects on the community and its effectiveness in addressing the target problems; and

WHEREAS, this ordinance is an exercise of the City of Bellingham's police and regulatory authority derived from Wash. Const. art. XI, Section 11 and is consistent with RCW 35.22.280.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. A new chapter designated as BMC 6.11 is hereby added to read as follows:

Chapter 6.11 - Source of Income Discrimination.

BMC 6.11.010 - Definitions.

As used in this section:

"Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons on a non-transient basis including permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Housing authority or other subsidy provider" means a local agency responsible for administering a housing choice voucher (Section 8) program or other subsidized voucher based or rental assistance program that requires inspections within the city of Bellingham.

"Landlord" means the owner, lessor, or sublessor of the rental unit or the rental property of which it is a part, and in addition means any person designated as representative of the owner, lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated property manager.

"Rental Unit" means a residential housing unit occupied or rented by a tenant or available for rent by a tenant. "Rental Unit" also means a "mobile home lot" as defined by RCW 59.20.030 as amended and in effect at the time a rental application is submitted and which at the time of adoption of this chapter is defined as a "portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory building, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model."

"Source of income" includes 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. "Source of income" does not include income derived in an illegal manner.

BMC 6.11.020 - Refusal to rent based on source of income prohibited.

A. No person shall refuse to rent a rental unit to any rental applicant on the basis that the applicant proposes to rent such unit with a source of income as defined in this chapter.

B. If tenant income screening criteria are used, the amount of the rent voucher or subsidy must be subtracted from the total of the monthly rent prior to calculating whether the income criteria have been met.

C. No person shall make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a rental unit that indicates any preference, limitation, or discrimination based on source of income as defined in this chapter, or an intention to make any such preference, limitation, or discrimination.

D. Nothing in this chapter shall be interpreted or construed to prohibit any person from making a choice among prospective tenants on the basis of factors other than source of income, subject to other federal, state, or local laws prohibiting nondiscrimination in housing.

BMC 6.11.030 - Exceptions.

A. Nothing in this chapter shall apply to the renting, sub-renting, leasing, or subleasing of a portion of a dwelling unit, wherein the owner or person entitled to possession thereof maintains a permanent residence, home, or abode therein.

B. The prohibition in BMC 6.11.020 does not apply to the use of a Section 8 housing choice voucher or certificate if the rental unit does not qualify for participation in such program according to applicable public housing authority guidelines. This may include disqualification due to monthly lease amounts or other lease terms. The prohibition in BMC 6.11.020 does not apply to the use of a Section 8 housing choice voucher or other voucher if the time between the date the unit is ready for a required inspection, as confirmed in writing by the landlord and received by the housing authority or other subsidy provider, and the date of actual inspection is greater than 10 business days. However, refusal to allow a health and

safety inspection of the property by the public housing authority shall not be permitted to serve as a basis for denying the use of a Section 8 voucher or certificate.

BMC 6.11.040 - Civil Action Remedy.

The remedy stated in this section shall be available to a tenant in a court of competent jurisdiction to the extent such action is allowed by law. A person who refuses to rent a unit to any rental applicant when the refusal is in violation of this chapter shall be liable to such tenant in a private right of action for actual damages up to $5,000, costs of suit or arbitration, and reasonable attorney's fees.

BMC 6.11.050 - City Enforcement - Civil Infraction.

In addition to any other remedy provided by this chapter or allowed by law, any person violating any of the provisions or failing to comply with any of the requirements of this chapter shall have committed a civil infraction and shall be punished by a fine not to exceed the following amounts:

A. First Offense - $500
B. Second Offense - $750
C. Third Offense - $1,000

For purposes of this section, the term "any person" includes, but is not limited to, any owner, landlord, resident manager, and property manager and agents of such persons and incorporates the definition of "person" stated in BMC 1.04.010.

BMC 6.11.060 - Severability.

If any section, sentence, clause, or phrase (i.e., provision) of this chapter or its application to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision and the remainder of this chapter, or the application of such provisions to other persons or circumstances, shall not be affected.

Section 2. A new chapter designated as BMC 6.12 is hereby added to read as follows:

Chapter 6.12 - Notice of Rent Increase.

BMC 6.12.010 - Definitions.

As used in this chapter:

"Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons on a non-transient basis including permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Landlord" means a "landlord" as defined in and within the scope of RCW 59.18.030 and RCW 59.18.040 of the Residential Landlord Tenant Act of 1973 ("RLTA") in effect at the time

the rental agreement is executed. At the time of adoption of this chapter, the RLTA defined "landlord" as "the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part," and included "any person designated as representative of the landlord."

"Housing costs" means the compensation or fees paid or charged, usually periodically, for the use of any property, land, buildings, or equipment. For purposes of this chapter, housing costs include the basic rent charge and any periodic or monthly fees for other services paid to the landlord by the tenant, but do not include utility charges that are based on usage and that the tenant has agreed in the rental agreement to pay, unless the obligation to pay those charges is itself a change in the terms of the rental agreement.

"Rental agreement" means a "rental agreement" as defined in and within the scope of RCW 59.18.030 and RCW 59.18.040 of the RLTA in effect at the time the rental agreement is executed. At the time of adoption of this chapter, the RLTA defined "rental agreement" as "all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit."

"Tenant" means a "tenant" as defined in and within the scope of RCW 59.18.030 and RCW 59.18.040 of the RLTA in effect at the time the rental agreement is executed. At the time of adoption of this chapter, the RLTA defined "tenant" as "any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement."

BMC 6.12.020 - Rental agreement requirements.

Any rental agreement or renewal of a rental agreement for a residential rental unit in the City of Bellingham entered into after the effective date of this chapter shall include or shall be deemed to include a provision requiring a minimum of sixty (60) days prior written notice whenever the periodic or monthly housing costs to be charged a tenant is to increase by ten (10) percent or more over the periodic or monthly rental rate charged the same tenant for the same housing unit and same services for any period or month during the preceding twelve (12) month period.

BMC 6.12.030 - Provisions in violation of restrictions null and void.

Any provisions in violation of BMC 6.12.020 in a rental agreement are null and void and of no lawful force and effect.

BMC 6.12.040- Exception.

Nothing in this chapter shall apply to the renting, sub-renting, leasing, or subleasing of a portion of a dwelling unit, wherein the owner or person entitled to possession thereof maintains a permanent residence, home, or abode therein.

BMC 6.12.050 - Rental agreement that waives tenant's remedies prohibited - Exception.

A. No rental agreement, whether oral or written, may provide that the tenant waives or foregoes rights or remedies under this chapter, except as provided by subsection B below.

B. A landlord and tenant may agree, in writing, to waive specific requirements of this chapter if all of the following conditions have been met:

1. The agreement to waive specific provisions is in writing and identifies the specific provisions to be waived; and

2. The agreement does not appear in a standard form written lease or rental agreement; and

3. There is no substantial inequality in the bargaining position of the two (2) parties; and

4. The attorney for the tenant has approved in writing the agreement as complying with subsections (B) (1), (B) (2) and (B) (3) of this section.

BMC 6.12.060 - Severability.

If any section, sentence, clause, or phrase (i.e., provision) of this chapter or its application to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision and the remainder of this chapter, or the application of such provisions to other persons or circumstances, shall not be affected.

Section 3. A new chapter designated as BMC 6.13 is hereby added to read as follows:

Chapter 6.13 - Notice of No Cause Termination.

BMC 6.13.010 - Definitions.

As used in this chapter:

"Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons on a non-transient basis including permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Tenant" means a person occupying or holding possession of a building or premises pursuant to a rental agreement, including an expired rental agreement.

BMC 6.13.020 - Additional Affirmative Defense Created.

A. Pursuant to provisions of the state Residential Landlord-Tenant Act (Chapter 59.18 RCW) owners may not evict residential tenants without a court order, which can be issued by a court only after the tenant has an opportunity in a show cause hearing to contest the eviction (RCW 59.18.380). In addition to any other legal defense a tenant may have, it is an additional affirmative defense to an unlawful detainer action that a landlord failed to give a 60 day "no cause" notice to a monthly or periodic tenant, with service effected in the same manner as required for notice under RCW 59.18.200(1)(a), prior to the end of such month or period unless a different for cause notice period is specifically authorized by law. Examples of for cause notice that are exempt from this section include, but are not limited to, 3 day notice to pay or vacate, 3 day notice for waste or nuisance, 10 day notice to comply with the terms

of the rental agreement or vacate, and any 20 day notice provided under federal or state guidelines applicable to low income or affordable housing programs that is also accompanied by documentation of serious and repeated violations of the material lease provisions or a condition that makes the resident's unit uninhabitable.

B. Any rental agreement provision which waives or purports to waive any right, benefit or entitlement created by this section shall be deemed void and of no lawful force or effect.

BMC 6.13.030 - Civil Action Remedy.

In addition to the affirmative defense set forth in BMC 6.13.030, the remedy stated in this section shall be available to a tenant in a court of competent jurisdiction to the extent such action is allowed by law. A person who files an unlawful detainer action without providing the notice required by this chapter shall be liable to such tenant in a private right of action for actual damages up to $5,000, costs of suit or arbitration, and reasonable attorney's fees.

BMC 6.13.040- Exception.

Nothing in this chapter shall apply to the renting, sub-renting, leasing, or subleasing of a portion of a dwelling unit, wherein the owner or person entitled to possession thereof maintains a permanent residence, home, or abode therein.

BMC 6.13.050 - Severability.

If any section, sentence, clause, or phrase (i.e., provision) of this chapter or its application to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision and the remainder of this chapter, or the application of such provisions to other persons or circumstances, shall not be affected.

PASSED by the Council this 26th day of February, 2018.

Roxanne Murphy, Council President

APPROVED by me this 19th day of March, 2018.

Kelli Linville, Mayor

ATTEST:
Brian Henshaw, Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

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