

# Source of Income Discrimination

GREAT NEIGHBORHOODS COMMITTEE

1

## Briefing Objectives

- ◁Committee Charge
- ◁Charlotte Fair Housing Ordinance Background
- ◁Research
  - National
  - North Carolina
  - Incentives
  - Legal Challenges
- ◁Landlord Survey
- ◁SWOT Analysis
- ◁Alternatives and Recommendations
- ◁Next Steps

2

1

## Committee Charge

1. Draft proposed local SOID ordinance, and complete a SWOT(a) analysis
2. Provide list of cities that prohibit discrimination based on SOID
3. Engage INVLIVIAN to see what type of mitigation factors they can help with, and
4. Provide alternatives and recommendations on incentives and educational opportunities to help mitigate landlord concerns

## Charlotte Fair Housing Ordinance Background

- ◁The City's current Fair Housing ordinance secures protections for all persons within the city from discrimination based on **race, religion, color, sex, national origin, familial status and disability**, in all housing related transactions.
- ◁30 to 40 complaints are investigated annually with race, disability, and familial status being the most frequent.
- ◁**In the last five years, three inquiries have been received for potential source of income discrimination.**

# Charlotte Fair Housing Ordinance Background

## Chapter 12 - HUMAN RELATIONS ARTICLE V. - FAIR HOUSING

### Sec. 12-106. - Title.

This article shall be known and may be cited as the "Fair Housing Ordinance" of the city.

### Sec. 12-107. - Purpose.

The general purposes of this article are to:

1. Provide for execution within the city of the policies embodied in title VIII of the Federal Civil Rights Act of 1968, as amended.
2. **Secure for all persons within the city freedom from discrimination because of race, color, religion, national origin, sex, handicap or familial status in real estate transactions.**

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1. Provide for execution within the city of the policies embodied in title VIII of the Federal Civil Rights Act of 1968, as amended.
2. **Secure for all persons within the city freedom from discrimination because of race, color, religion, national origin, sex, handicap, source of income or familial status in real estate transactions.**

# Charlotte Fair Housing Ordinance Background

- ◀ If source of income is added as a protected class, the current Fair Housing ordinance will be amended to add "source of income" to the list of protected classes in each applicable section of the ordinance.
- ◀ This includes sections:
  - 12-107 - Purpose
  - 12-108 - Effect of article on other ordinances
  - 12-109 - Definitions
  - 12-111 - Discrimination in real estate transactions
  - 12-114 - Discrimination in residential real-estate-related transactions
  - 12-115 - Discrimination in provision of brokerage services
  - 12-116 - Other unlawful practices

# Charlotte Fair Housing Ordinance Background

## Section 12-109 – Definitions (proposed)

**Source of income**-any lawful, verifiable source of income, or its equivalent, from which an individual can pay rental, mortgage or other payments associated with the provision of housing. The term shall specifically include Section 8 vouchers or certificates issued by the United States Department of Housing and Urban Development or other similar contractual commitments whereby a third party commits to making all or a portion of rental, mortgage or other housing-related payments.

# Research



9

## Research – National (States)

- ◁ The majority of states (34) do not have Source of Income laws
- ◁ 16 states have Source of Income laws. Of these, four specifically exclude Section 8 vouchers\*.

- |                |                  |                |
|----------------|------------------|----------------|
| 1. California* | 6. Massachusetts | 11. Oklahoma*  |
| 2. Connecticut | 7. Minnesota*    | 12. Oregon     |
| 3. Delaware    | 8. New Jersey    | 13. Utah       |
| 4. Hawaii      | 9. New York      | 14. Vermont    |
| 5. Maine       | 10. North Dakota | 15. Washington |
|                |                  | 16. Wisconsin* |

- ◁ Texas and Indiana passed laws preempting any local SOID protections

Source: 2019 National Multifamily Housing Council

## Research – National (Cities)

City	SOID	Dillon/Home	Current Status	Incentives
Atlanta, GA	Yes*	Home	Not enforced locally	None
Austin, TX	Yes*	Home	Enacted 2014. Superseded by the state in 2018. Currently in litigation	None
Dallas, TX	Yes*	Home	Enacted 2014. Superseded by the state in 2018. Currently in litigation	None
Denver, CO	Yes	Home	Active since 2018	None
Memphis, TN	Yes*	Varies by city	Enacted 2002. Superseded by the state in 2011. Not enforceable	None
Miami Dade, FL	Yes	Home	Active since 2009	None
Portland, OR	Yes	Home	Active, last updated 2019	Statewide Landlord Guarantee Program – fund to cover damages for landlords who accept HCV
San Diego, CA	Yes	Varies by city	Active since 2019	None
Seattle, WA	Yes	Home	Active since 1989	Landlord Mitigation Program – fund to cover losses for landlords who accept HCV

\*Not currently enforced / state preemption

## Research – National (Cities-continued)

City	SOID	Dillon/Home	Current Status	Incentives
Arlington, TX*	No	Home	No current action	None
Columbus, OH	No	Home	Council is considering SOID protections	None
Indianapolis, IN*	No	Home	2017 State illegalized SOID protections and rent controls.	None
Nashville, TN	No	Varies	No current action	None
Omaha, NE	No	Dillion	No current action	None

\*State preemption

## Research - North Carolina

City/Avg. Rent	SOID	Incentives	Other
Durham (\$1,223)	No	<ul style="list-style-type: none"> <li>\$500 to landlords who rent to formerly homeless households</li> <li>\$250 to renew leases for 2<sup>nd</sup> year</li> </ul>	
Raleigh (\$1,223)	No	<ul style="list-style-type: none"> <li>None</li> <li>Expressed belief that due to strong rental market, it would be very difficult to create meaningful incentives</li> </ul>	<ul style="list-style-type: none"> <li>Expressed concern about legislative response</li> <li>Incorporating clause in City loan documents requiring property owners to accept vouchers</li> <li>Monitoring activity around SOID protections for possible future action</li> </ul>
Asheville (\$1,192)	No	<ul style="list-style-type: none"> <li>None</li> </ul>	<ul style="list-style-type: none"> <li>Monitoring activity around SOID protections for possible future action</li> <li>Encourage landlords to accept vouchers</li> </ul>
Winston Salem (\$937)	No	<ul style="list-style-type: none"> <li>None</li> </ul>	
Greensboro (\$937)	No	<ul style="list-style-type: none"> <li>None</li> </ul>	

Average rent in Charlotte: \$1,229 (2BR)

\*Cities have no existing protections, nor are any currently pursuing protections

## Research – (National) Landlord Incentives

◁ Across the country, various incentives have been created to increase landlord acceptance of housing vouchers. Examples include:

Location	Incentive
Virginia	<ul style="list-style-type: none"> <li>Income tax credits to landlords in high opportunity areas that accept Housing Choice Vouchers (e.g. Richmond, Virginia Beach, Newport)</li> </ul>
Marin County, CA	<ul style="list-style-type: none"> <li>Reduced or waived building permit fees for repairs or improvements</li> <li>Interest-free loans up to \$25K for rehab, and \$35K for new ADUs</li> <li>\$3K forgivable loan [for critical repairs]</li> <li>Up to \$3,500 for tenant damages</li> <li>One month's rent [to allow for repairs] while repairing excessive damage to unit, when landlord commits to rent to another voucher holder</li> <li>Hotline to assist landlords in resolving disputes</li> </ul>
Santa Barbara, CA	<ul style="list-style-type: none"> <li>\$500 signing bonus for new landlords; \$100 referral bonus</li> <li>Up to \$2K reimbursed for unit damage, unpaid rent and related court costs</li> <li>Vacancy loss payment due to tenant damages</li> </ul>
Oregon	<ul style="list-style-type: none"> <li>Statewide Landlord Guarantee Program – fund to cover damages for landlords who accept HCV</li> </ul>
Washington	<ul style="list-style-type: none"> <li>Landlord Mitigation Program – fund to cover losses for landlords who accept HCV</li> </ul>

# Research – (Local) Landlord Incentives

## HousingCLT

- <Connects tenants and landlords, helping each be successful in the relationship (landlord consortium)
- <Staffing: Four people, includes three housing navigators
- <Services provided
  - Signing bonuses, between \$100-\$1,000. This is sometimes used to incent the landlord to lower the per month rent under fair market rent (FMR).
  - Provide a risk mitigation fund to cover excessive damages/ eviction costs
  - Pay existing rent / eviction/ utility arrears to help tenant become 'rent ready'
  - Pay a holding fee to incent landlord to hold the unit so an inspection can be conducted
  - Hire private inspectors to conduct quicker inspections (INLIVIAN requires use of their own inspectors)
  - Pay for repairs to meet HUD's Housing Quality Standards (HQS) - the program has bought appliances for units that do not come with them to meet HQS

# Research – (Local) Landlord Incentives

**INLIVIAN** - Conducted a landlord survey, and made program enhancements in 2019, to address landlord concerns

Barrier	Enhancement
Financial Risk	<ul style="list-style-type: none"> <li>• Increased program rents in high opportunity areas (subsidy up to 150% of FMR)</li> <li>• Established risk/damage fund post move-out, up to \$1,000</li> <li>• Provide funding between lease-ups to offset time unit may be vacant</li> <li>• Annual rent increase of 2% minimum each year upon request</li> </ul>
Inspections	<ul style="list-style-type: none"> <li>• Every two years instead of annually</li> <li>• Decreased average number of days for lease-up inspection from 12 days to one week</li> <li>• Landlords can self-certify non-health and safety issues instead of scheduling re-inspection</li> </ul>
Process	<ul style="list-style-type: none"> <li>• Created Housing Provider Outreach position and 1<sup>st</sup> time housing provider Concierge service</li> <li>• Annual Housing Provider symposium and quarterly briefings to go over process and new policies</li> <li>• Established Housing Provider Advisory group</li> <li>• Established \$250 signing bonus</li> <li>• Initiated Media Campaign #HousingForEveryone</li> </ul>



# Research – SOID Legal Challenges

## ◀ Minneapolis (~2 years)

- March 2017 - City ordinance adopted ; June 2017 - Landlord filed challenge
- 2019 Appeals Court ruling vacated the lower court's issuance of a summary judgment order but did not uphold the underlying SOID ordinance.
- Note: While MN has state SOID protections, in 2010 a court case ruled that Section 8 is excluded from state source of income protections.

## ◀ Pittsburgh (3+ years)

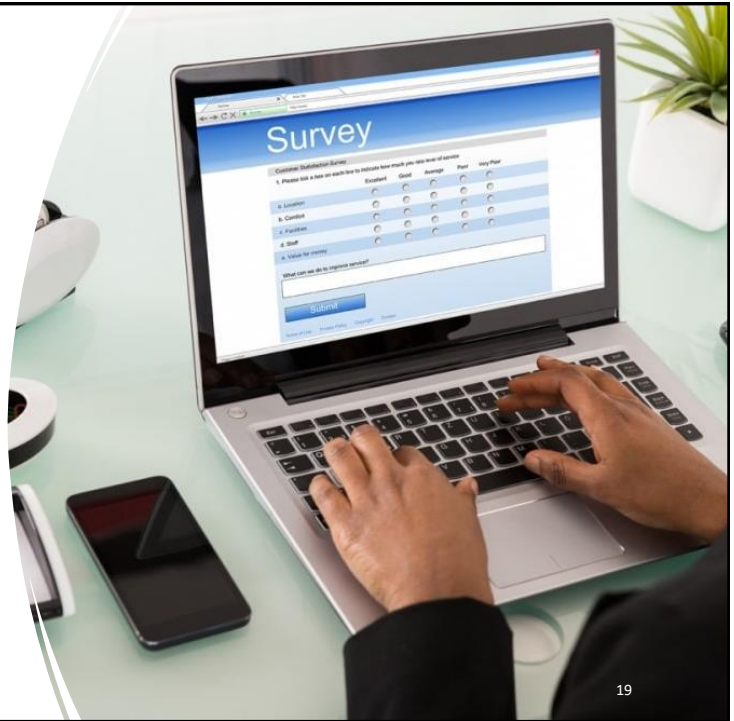
- December 2015 - City ordinance adopted; January 2016 - Apartment Association filed challenge
- Pennsylvania court of appeals invalidated city's ordinance despite Pittsburgh having home rule status. The court determined that the SOID ordinance violated even Pennsylvania's home rule statute.

# Research – SOID Legal Challenges

## ◀ Austin (5+ years)

- April 2014 - City ordinance adopted; Austin Apartment Association immediately filed challenge. Federal court ruled in favor of city.
- 2015: State adopts law that preempts rights of municipalities to provide source of income protection
- 2017: Austin filed suit against state
- December 2019: Federal appeals court tossed out city's case,

# Landlord Survey



19

19

## Local Landlord Survey - Questions

1. What is the size of your rental real estate portfolio?
2. Does your portfolio primarily consist of single-family or multi-family developments?
3. Do any of your properties within the city of Charlotte accept any type of rental subsidies and/or participate in the Section 8 (Housing Choice Voucher) program? If so, what rental subsidies do you accept?
4. If you do NOT accept rental subsidies, what is the reason(s)?
5. Are there any modifications to rental subsidy/voucher programs or processes that would encourage you to accept subsidies? If you already accept subsidies, are there modifications that would encourage you to accept more than you do now?
6. Please share from your perspective what you believe the pros and cons are of adding 'Source of Income' protection to the city's Fair Housing ordinance.

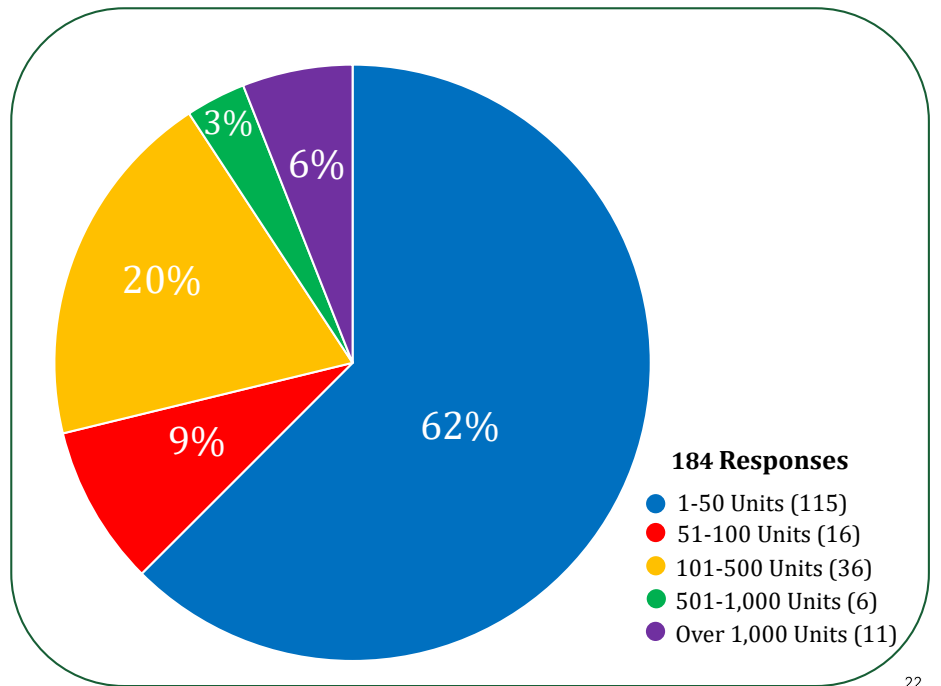
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# Who we surveyed

Source	Number	Notes
Emergency Rental Assistance Program (ERAP)	343	• Landlords that have received City funds for ERAP on behalf of their tenants, AND that provided email addresses
Socialserve	4,467	• Mecklenburg County users of Socialserve.com.
Greater Charlotte Apartment Association	220	• GCAA Owner management company members, including small and large companies
Affordable Housing Developers	20	• Housing developers that have received City financial assistance
<b>TOTAL</b>	<b>5,050*</b>	

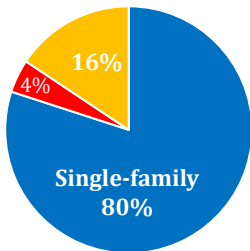
\*In addition, six local subsidy providers were also contacted

What is the size of your rental real estate portfolio?



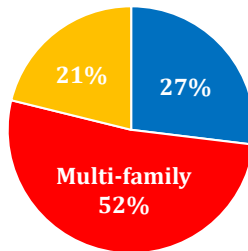
## Does your portfolio primarily consist of single-family or multi-family developments?

1-50 Units (115)



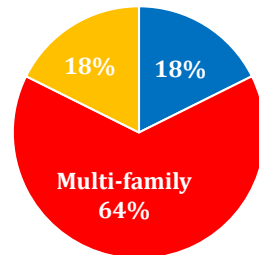
- Single-family (92)
- Multi-family (5)
- Both (18)

51-500 Units (52)



- Single-family (14)
- Multi-family (27)
- Both (11)

Over 500 Units (17)



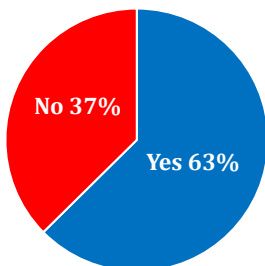
- Single-family (3)
- Multi-family (11)
- Both (3)

23

23

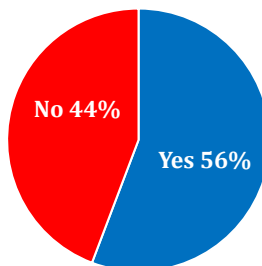
## Do any of your properties within the city of Charlotte accept subsidies, including Housing Choice Vouchers (Section 8)?

1-50 Units (115)



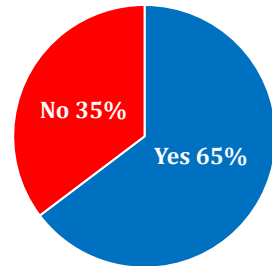
- Yes (72)
- No (43)

51-500 Units (52)



- Yes (29)
- No (23)

Over 500 Units (17)



- Yes (11)
- No (6)

24

24

## What rental subsidies/vouchers do you accept?

- Housing Choice Vouchers (Section 8) is the most common subsidy accepted
- Additional subsidies accepted

## If you do not accept rental subsidies, what is the reason?

### Common Themes for not accepting Housing Choice Vouchers (HCVs)

- *Prior bad experiences with process and tenants*
- *Bureaucracy; too much paperwork; takes too long to get approval*
- *Rent increases*
  - Process is burdensome
  - Limits on the amount rent can be increased
  - Often does not keep pace with other program limits (LIHTC, HOME)
- Inspections are too rigid and *take too long*
- Lack of accountability of the tenant and the subsidy/voucher program itself

*Italics: 2019 INLIVIAN enhancements attempt to address landlord concern*

## If you do not accept rental subsidies, what is the reason?

### Common Themes for not accepting HCVs (continued)

- *Not economically feasible*
  - *Rent payment less than market rates*
  - *Repair costs due to tenant damage*
  - *Time unit must be off-market due to HCV processes (while waiting for inspection, etc.)*
- Can readily find tenants without the hassle of the voucher process
- Housing voucher recipients often have a total household income level that is so low that, even with the voucher, they cannot afford the basics needed to create a stable tenancy

*Italics: 2019 INLIVIAN enhancements attempt to address landlord concern*

## From your perspective, what do you believe are the pros and cons of adding 'Source of Income' protection to the city's Fair Housing ordinance?

### **Pros**

- ◀ More housing opportunities for low-income families
- ◀ Economic opportunity for voucher households by creating opportunities to live in higher-end properties in more stable neighborhoods; will be a good step in breaking the circle of poverty and crime that too many vouchers holders must deal with daily

## From your perspective, what do you believe are the pros and cons of adding 'Source of Income' protection to the city's Fair Housing ordinance?

### Cons

- ◀ *The period of time waiting for an inspection is dead time when the property is not rented and therefore not generating rental income. However, those homes continue to generate expenses for the owner: property taxes, assessments, mortgage and financing costs.*
- ◀ *Increased landlord expense for tenant damages (often substantial) that are not reimbursed by tenant or INLIVIAN.*
- ◀ *Section 8 does not pay market rent.*
- ◀ *The net result is going to be landlords raising rent across the board to try to recoup the lost revenue that working with Section 8 causes.*
- ◀ *Risk that owners will decide to sell their homes, particularly those unable to manage the administrative tasks and income implications.*
- ◀ *Will put further constraints on the availability of quality, affordable housing.*
- ◀ *Removes landlord decision of who they rent to within the federal fair housing laws.*

## From your perspective, what do you believe are the pros and cons of adding 'Source of Income' protection to the city's Fair Housing ordinance?

### Cons

- ◀ *Landlords would be exposed to unnecessary liability, increased costs (i.e. compliance monitoring, legal fees) and potential loss of income.*
- ◀ *It would only cause higher eviction rates.*
- ◀ *It won't be enforceable and won't result in increased housing. With so many people looking for rental homes (both with / without vouchers), an owner normally has several options/applicants for who to rent to...thus, they can always select a non-voucher applicant and support their decision without showing bias.*
- ◀ *Other rental assistance groups are fantastic to work with, but Section 8 specifically is known to be onerous and therefore avoided.*
- ◀ *It is going to give the Section 8 program no incentive to improve itself.*
- ◀ *Will have difficulty attracting good landlords.*
- ◀ *It is going to result in lawsuits against the city.*

# Rental Organizations

- ◁ Greater Charlotte Apartment Association
  - ◁ Apartment Association of North Carolina
  - ◁ National Apartment Association
  - ◁ National Multifamily Housing Council
  - ◁ National Rental Home Council
- Support subsidy programs, but oppose efforts at the state and local level to mandate Housing Choice Voucher (HCV) participation
  - Issue is not SOID or tenants, but is the various aspects of the HCV program
  - GCAA is aware of recent enhancements made by INLIVIAN, and is willing to participate in City-facilitated discussions with INLIVIAN to identify additional improvements to the HCV program

# SWOT Analysis





## Strengths

- ◀ Charlotte's Fair Housing ordinance has been in place for more than forty years.
- ◀ Certified as substantially equivalent to the Federal Fair Housing Act.
- ◀ HUD's position that any local ordinance that is certified, is considered to be stronger if it has protections beyond the seven protections in the federal law.
- ◀ Experienced staff and infrastructure already in place to enforce the ordinance.
- ◀ Familial status and disability added in 1988 with enabling legislation from the NC General Assembly, creates precedent for adding additional protected classes.
- ◀ Adding Source of Income as a protected class could allow more people to obtain stable housing and economic mobility.
- ◀ Community support from non-profit and other organizations.

## Weaknesses

- ◀ Lack of data (Fair Housing and INLIVIAN) to definitively demonstrate a business case for adding source of income protection.
- ◀ If done without enabling legislation, this portion of the ordinance will not be enforceable, and as a result residents seeking redress through the ordinance will be left with none.
- ◀ HUD has not defined "source of income" nor has it provided guidance regarding source of income enforcement.
- ◀ Since HUD does not recognize source of income as a protected class, there will likely be no reimbursement for SOID fair housing investigations.
- ◀ There is no precedent in other North Carolina communities.
- ◀ Process for implementing required voucher acceptance, and enforcement of requirement, is unclear.
- ◀ Landlord feedback indicates mixed support.
- ◀ Opposition from local rental/housing providers, and organizations representing the rental housing industry.

# Opportunities

- ◀ Opportunity to strengthen our current ordinance by expanding civil rights protections in our community, including creating precedent for possible future amendments (e.g. sexual orientation, marital status, etc.).
- ◀ Opportunity to help address homelessness and affordable housing concerns.
- ◀ Opportunity to provide additional fair housing education and outreach to vulnerable parts of our population as well as landlords, property managers, etc.
- ◀ New administration and HUD Secretary Appointee could result in new HUD guidance.
- ◀ If HUD issues federal guidance on receiving and investigating cases where SOID is the protected class, any increase in cases received/investigated by CRC could equate to more HUD funding to address housing discrimination in our community.
- ◀ Opportunity to explore alternatives, such as expanding the work of Housing CLT.

# Threats

- ◀ General Assembly is unlikely to provide enabling legislation.
- ◀ Without enabling legislation, a legal challenge to this portion of the ordinance is very likely to be successful.
- ◀ HUD has not provided guidance on SOID (no clear federal definition of source of income).
- ◀ HUD will not support City investigations and costs associated therewith.
- ◀ Unintended consequences
  - Increased Rents: Landlords may respond by raising rents across city to just above FMR, resulting in increased housing costs for low-income residents.
  - Decreased Housing: Landlords may respond by selling their affordable units, or removing their units from rent rolls, resulting in decreased housing availability for low-income residents.
  - Decreased Investments: May negatively impact investment in the city.
  - Increased Tenant Expense: May result in additional out-of-pocket application fee expenses for low-income households.
  - Reduced Housing Search Options: Landlords may choose to not list their properties.

## Alternatives and Recommendations

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37

## Landlord Recommendations (HCVs)

### INSPECTIONS

- *Reduce time of inspections*
- *Create allowances for inspections instead of pass/fail*
- *Allow small repairs that can be made onsite easily, instead of requiring a reinspection that could take a week or more to schedule*
- Simplify inspections
- Be realistic in unit criteria

### ACCOUNTABILITY

- *Reimburse owner for damages or otherwise help with repairs, instead of requiring owner to pay for repairs caused by tenant*
- Subsidy provider must hold tenants responsible for damages
- Make it easier to remove tenant if they are damaging unit
- If tenant does not pay for damages, they should lose eligibility

*Italics: 2019 INLIVIAN enhancements attempt to address landlord concern*

38

# Landlord Recommendations (HCVs)

## TENANT SELF-SUFFICIENCY

- Implement a more rigorous tenant screening process
- Provide path to self-sufficiency and renter success by requiring tenants to participate in training programs, including how to clean and care for housing / property, and financial issues associated with renting
- Guarantee case management for voucher-holders (e.g. a financial coach, etc.)
- For first year voucher holders, home visits quarterly that ensure the children are in school and doing well, and no other occupants reside in the home

## FINANCIAL (RENT INCREASES)

- *Increase the maximum rent increase allowed*
- Simplify process for rent increase
- Eliminate increase-cap each year, but rather re-evaluate based on current comps nearby and raise rent to be comparable to non-Section 8 rentals
- Make rent increase automatic (annually or at time of recertification), instead of requiring landlord to request increase

*Italics: 2019 INLIVIAN enhancements attempt to address landlord concern*

# Landlord Recommendations (HCVs)

## FINANCIAL (OTHER)

- *Increase subsidy amount so that rents are comparable to market-rate in area*
- Remit initial payments to landlords faster
- Increased reimbursement rates for 1 and 2-bedroom units
- Lock in voucher amount for entire lease term no matter how the voucher holder's situation changes
- Provide larger deposits
- Added financial protections (e.g. if tenant pays their portion of rent late, subsidy holder will pay the late fees)
- Cover all eviction costs

## PROGRAM PROCESS AND ADMINISTRATION

- *Improve quality of the service (program administration, including inspections)*
- More transparent processes, the use of more automation (online forms with digital signature) and expedited tenant placement (10-days or less)
- Finite timelines from lease application to inspection, and inspection to move-in, that are transparent and can compete with market-based timelines for non-subsidized tenants
- Provide a certified list of available maintenance handymen to assist in housing acceptance and expedite approval
- INLIVIAN should pay 100% of rent to landlord, then collect tenant's portion from the voucher-holder
- Allow SROs to participate

*Italics: 2019 INLIVIAN enhancements attempt to address landlord concern*

## Staff Alternatives / Recommendations

1. Adopt a policy requiring mandatory acceptance of HCVs and other forms of rental subsidy in all City supported housing.
2. Create a Council appointed ad hoc Advisory Group to develop program enhancements and process improvements to the HCV program, including representatives from:
  - INLIVIAN
  - Private sector landlords
  - Property management professionals
  - Greater Charlotte Apartment Association
  - Subsidy providers
  - Other
3. Encourage and monitor changes to the HCV Program at the Federal level with the new administration.
4. Consider amending Fair Housing Ordinance if HCV program enhancements and process improvements are not successful.

## Next Steps

- ◀ Update Council at an early 2021 meeting
- ◀ Council appoints ad hoc Advisory Group
- ◀ Advisory Group convenes and develops new Housing Choice Voucher program enhancements
- ◀ Implement and monitor progress over the next 18 to 24 months, and report back to Council