

Source of Income Protections: Recommended Enforcement Approach

August 15, 2022 | Great Neighborhoods Committee

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Source of Income Protections in City Supported Housing

BACKGROUND/STATUS

1. **Feb 28th:** SOI Ad Hoc Advisory Committee co-chairs presented three recommendations to the Great Neighborhoods Committee (*refer to slide 8 for the recommendations*)
2. **March 28th:** City staff facilitated a policy discussion – related to SOI Ad Hoc Advisory Committee recommendation #1 – with the Great Neighborhoods Committee
3. **June 27th:** Staff presented the recommended Source of Income Protections in City-Supported Housing policy to City Council, for discussion and feedback
4. **July 11th:** Council approved the Source of Income Protections in City-Supported Housing policy, except for the proposed policy language related to enforcement. Mayor Lyles and Council outlined the necessary steps to finalize the enforcement provisions associated with the policy:
 1. Evaluate/finalize the recommended policy enforcement and related non-compliance remedies
 2. Seek community feedback
 3. Seek feedback from Great Neighborhoods Committee [and additional members of Econ. Dev. Committee]
 4. City Council to vote on the enforcement provisions on August 22, 2022

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Source of Income Policy Enforcement: Guiding Principles

1. **Source of income protections and enforcement provisions shall be applicable to all for-rent housing in City-supported developments.**
 - ✓ Affordable and/or market rate housing
 - ✓ Master developer and/or third-party developers [if applicable]
 - ✓ Compliance term equal to the greater of the incentive period or affordability period [as applicable, based on the applicable City support agreement]
2. **Compliance requirements and related enforcement provisions should be applicable to the housing owner/provider[s] responsible for making rental eligibility decisions (related to the rental subsidy holders).**
3. **Penalties for non-compliance should be meaningful (i.e., “have teeth”), but not be grossly disproportionate to the offense.**
4. **Enforcement mechanism should be easily understood, with straightforward violation consequences, and flexible enough to accommodate all current and future City-supported development scenarios.**

Source of Income: Enforcement Approach

	Original Proposal <i>[Shared with Council on July 11, 2022]</i>	Staff and Ad Hoc Advisory Group Leadership Recommendation
First violation	<ol style="list-style-type: none"> 1. Written warning and mandatory compliance training 	<ol style="list-style-type: none"> 1. Mandatory compliance training, and housing provider shall be provided 30 days [from the date of the confirmed violation] to cure the violation without penalty 2. If violation not cured within 30 days of the confirmed violation, housing provider shall pay the applicant denied housing \$100/day until the violation is cured, or 180 days, whichever occurs first 3. If violation not cured by the end of the 180 days referenced in #2 above, housing provider shall be subject to a maximum contractual remedy [payable to City of Charlotte] up to \$23,000¹
Two violations within five years	<ol style="list-style-type: none"> 1. Mandatory compliance training 2. Daily fee of \$500 until the violation is cured 	<ol style="list-style-type: none"> 1. Housing provider shall be provided 30 days [from the date of the confirmed violation] to cure the violation without penalty 2. If violation not cured within 30 days of the confirmed violation, housing provider shall pay the applicant denied housing \$100/day until the violation is cured, or 180 days, whichever occurs first 3. If violation not cured by the end of the 180 days referenced in #2 above, housing provider shall be subject to a maximum contractual remedy [payable to City of Charlotte] up to \$57,500¹
Three or more violations within seven years	<ol style="list-style-type: none"> 1. Written notification of default which will provide a time period to cure the violation 2. If not cured, developer must refund any funds provided by the City through the applicable project, and the developer may be precluded from future contracts with the City 	<ol style="list-style-type: none"> 1. Housing provider shall be provided 30 days [from the date of the confirmed violation] to cure the violation without penalty 2. If violation not cured within 30 days, housing provider shall pay the applicant denied housing \$100/day until the violation is cured, or 180 days, whichever occurs first 3. If violation not cured by the end of the 180 days referenced in #2 above, housing provider shall be subject to a maximum contractual remedy [payable to City of Charlotte] up to \$115,000¹, and the housing provider may be precluded from future contracts with the City

¹ Maximum remedy amounts mirror the maximum civil penalties associated with HUD Fair Housing Act violations [note: amounts subject to annual inflation adjustments]

Enforcement Implementation

1. **A housing provider will be in violation of the policy if a prospective residential tenant in a City-supported development is disqualified from renting a housing unit based on a refusal by the housing provider to consider a lawful source of income.**
 - *The policy is not intended to require terms that prevent a property owner/manager from determining, in a commercially reasonable and non-discriminatory manner, the ability of a housing applicant to afford to rent a property.*
2. **Residents who believe they have been denied access to housing based on a violation of the policy may initiate a complaint with the city by calling 311 or the Community Relations Committee.**
3. **Investigations will be conducted by the Community Relations Committee.**
4. **If a violation is not cured and the contractual remedy [e.g., up to \$23,000 for a first violation] is necessary, the remedy amount imposed will be influenced by factors such as: the nature and circumstances of the violation, degree of culpability and history of prior violations.**

Proactive Plans to Support Policy Compliance

Upfront Requirements for Housing Providers (to be established in contracts)

- City staff will provide mandatory training for all housing providers (including property management affiliates) that receive applicable City support, to ensure a mutual understanding of the policy requirements.
- Housing providers must agree to auditing/testing by the Community Relations Committee during the term of the policy applicability.

Ongoing Requirements for Housing Providers (to be established in contracts)

- Housing providers shall submit an annual report disclosing tenant eligibility criteria and including the number of units rented to households with housing vouchers and other forms of rental subsidies.
- Housing provider shall preserve all applicant denials and justifications for at least 24 months.

Appendix

Source of Income Protections in City Supported Housing

SOI AD HOC ADVISORY COMMITTEE RECOMMENDATIONS [SHARED WITH GREAT NEIGHBORHOODS COMMITTEE IN FEBRUARY 2022]

1. City and County should include source of income protections for any for-rent residential housing developments receiving public financial support of any kind
 - Includes both affordable and market-rate housing developments receiving Tax Increment Grants and other types of public financial support
2. City, County, private and philanthropic sectors should provide new or expanded funding to increase capacity of existing local organizations(s) to create greater rental housing provider participation in the Housing Choice Voucher (HCV) and other rental subsidy programs in areas of moderate to high opportunity
 - Emphasis on increased housing navigator capacity
 - Aligns with HOME-ARP RFP recommendations
 - Committee will be updated on opportunities for this at a future meeting
3. City or County should offer property tax reimbursements for new rental housing developments in high-opportunity areas that set aside at least 5% of their units for 30% AMI and below households with a voucher or rental subsidy
 - State statute prohibits City tax reimbursements of this nature
 - Staff is exploring options including discussion with Mecklenburg County staff

SOI Violations: Enforcement Benchmarking

ENFORCEMENT MECHANISMS SIMILAR TO THE ALTERNATIVE APPROACH SHOWN ON SLIDE 4

	HUD [Fair Housing Act Violations]	Miami-Dade County [Housing Discrimination Ordinance Violations]
First violation	Maximum civil penalty of \$23,011	Maximum civil fine up to \$10,000
Two violations within five years	Maximum civil penalty of \$57,527	Maximum civil fine up to \$25,000
Three violations within seven years	Maximum civil penalty of \$115,054	Maximum civil fine up to \$50,000

NORTH CAROLINA COMPARISON

- Based on staff research, Raleigh appears to be the only other municipality in North Carolina that has adopted a formal source of income protection for city-supported housing
- In March 2021, Raleigh adopted a resolution reflecting the following directive: The City Manager is directed, to the fullest extent permitted by law, to include among the terms of any City-provided financial assistance or subsidized real estate conveyance (for the production of affordable housing) that any prospective tenant or initial homebuyer for the development not be disqualified from participation based on a refusal to consider any lawful source of income
- The Raleigh resolution does not include any references to enforcement guidelines