SEATTLE CITY COUNCIL
CENTRAL STAFF

M E M O R A N D U M

To:	Members of the Civil Rights, Utilities, Economic Development & Arts Committee
From:	Asha Venkataraman
Date:	July 20, 2016
Subject:	Council Bill 118686: Source of Income Discrimination Issues and Amendments

The CRUEDA Committee discussed Council Bill 118686 and potential amendments at its May 24 and June 14, 2016 meetings. Since June 14, the Office of Civil Rights, the Office of Housing, and a wide range of stakeholders have provided input resulting in additional amendment options in three major areas:

- First-in-time policy,
- Community pledges, and
- Regulation of preferred employer programs.

This memo compares the original amendment options and new options for each of the three major areas. (Language of both options is provided in Attachment A.) This memo does not repeat issues identified in the June 14 Central Staff memo, except to the extent that such issues are resolved by a new amendment option. Also, an additional option is discussed for the definition of "section 8 or other subsidy program." Three other amendments (1, 3 and 6 discussed in June 14 Central Staff memo, which is attached as Attachment B) remain unchanged for the Committee to vote on. Therefore these options are not discussed in this memo.

First-In-Time Policy

There are two potential options for consideration. The primary difference between the two is the level of discretion landlords can exercise in implementing the "first-in-time process." Rather than requiring a date and time stamp, and the offer of tenancy to the first person meeting a landlord's screening criteria, option 2 covers the entire process from notification that a unit is available, to the screening process, to acceptance of an offer by a potential tenant who meets all of the landlord's criteria. The following discusses option 2 in more detail:

First, option 2 adds a notice provision that requires landlords to provide more than what is required by RCW 59.18.257, which requires notice of the types of information the landlord will use to conduct tenant screening and what criteria will result in denial of the application. (Option 1 mentions this notice by reference, but does not consider that it only requires criteria that will result in denial.) Option 2 requires the landlord to add criteria he or a tenant screening company is using to screen applicants. If a landlord has chosen to implement a practice of conducting individualized assessments for applicants with criminal records, the criteria for that assessment must be included as well. The additional or different criteria is specifically limited to what the landlord can reasonably anticipate as necessary to approve or deny an applicant, rather than anything that might possibly crop up after initially screening a tenant.

Option 2 also requires landlords to put applicants on notice regarding what information and documents they will be required to submit for an application to be considered complete. The list of information and documents would create a consistent standard defining a "complete application," and would not require that every possible piece of information the landlord discovers he might need later in the process to be detailed and included. The need for more information than what is described in the notice is addressed in option 2's screening requirements, which are described below.

Furthermore, option 2 contains a statement that "lack of a material omission in the application by the applicant will not render the application incomplete." If an applicant were to leave one question inadvertently unanswered on an application and the answer to that question was not essential to screening, or could be otherwise found in the application materials, (for example, forgetting to fill in a zip code) the landlord could not reject the application as incomplete. The need for the omission to be material for an application to be incomplete is significant.

Second, the landlord must document the date and time of receipt upon submission of a complete application. Both options 1 and 2 include this requirement.

Third, the landlord must then screen completed applications in the order received. If the landlord needs more information than was outlined in the notice, the landlord must notify the applicant in writing of what additional information is necessary and give the applicant at least 3 days to provide the information. For example, the landlord may need to see initial information from the applicant to determine whether they are eligible for a range of subsidized housing programs, but would need more information to evaluate which program applies, and cannot know what that additional information is until after the initial screening takes place. Or, if the applicant has a criminal record and the landlord wants to conduct an individualized assessment, the landlord may ask the applicant for further information at that time. The additional time would not change the applicant's position in line for screening unless the information is not provided within that specified time. In that case, the landlord can either outright reject the application, or can simply deem it incomplete, resulting in the applicant losing their place in line.

Fourth, the first person that meets all of the landlord's requirements must be offered the tenancy. If the offer is not accepted within three days, the landlord will continue to screen assuming there is a waiting list, or start the application process over again. This requirement exists in both options 1 and 2.

Fifth, option 2 adds how requests for more time to ensure meaningful access to the application or as a reasonable accommodation fits into the first-in-time policy. The ability to request more time because of the need for meaningful access is separate from the reasonable accommodation request so as to level the playing field for those for whom English is a secondary language (even if the landlord provides applications in several languages). The extra time without penalty in the first-in-time process allows those applicants a competitive chance to submit their application in a timely manner.

If a landlord requires documentation of the need for additional time for a reasonable accommodation, the applicant is subject to the same threshold of proof as in any existing reasonable accommodation request. A person claiming the need for meaningful access could perhaps provide a statement from the person or entity translating the application for them. To prevent abuse of the ability to request more time to ensure meaningful access, it is in the landlord's discretion to determine what "reasonable documentation" consists of. Either way, the applicant must provide the documentation within three days of the request.

Sixth, option 2 specifically carves out situations in which the first-in-time policy is not applicable, which includes when a landlord is obligated to or voluntarily agrees to set aside units for specific vulnerable populations. If offered to the public, any notice advertising the unit would be required to state that the unit was set aside for specific vulnerable population(s), and would not be subject to the first-in-time policy.

Lastly, the references in the option 2 to individualized assessments for applicants with criminal records do not require landlords to conduct them. Those references simply provide direction as to how to apply first-in-time if landlords choose to follow this best practice.

Because this is a new process that both landlords and tenants need to be aware and come into compliance with, this proposed amendment would go into effect January 1, 2017, with limited enforcement for an initial period of time. To determine whether this policy is having the intended effect of decreasing discrimination and to assess any unintended consequences, an assessment 12-18 months after the implementation of the policy would be informative.

Community Pledges

There are two potential options for consideration. Options 1 and 2 differ in that option 2 provides more definition and detail than option 1 regarding what costs are covered by a pledge, the circumstances in which the pledge must be accepted, and the timing limitations for pledges to be accepted.

The language in option 2 is intended to require a landlord to accept a pledge when the pledge and all other sources of income or subsidy account for the full payment of all costs to be paid during the time period in which a landlord is required to take full payment. For pledges that do not meet the specific parameters laid out in the proposed amendment, it remains at the landlord's discretion to accept or not accept the pledge as payment. The mandatory nature of specific pledge acceptance by the landlord is balanced by the following three considerations:

(1) The landlord's obligation is not to accept partial payment of costs incurred, only full payments, and only before the end of a statutory compliance period, such as after the end of the three day compliance period for a three day pay or vacate notice.

(2) No other commitments are contained in the pledge, except for what the landlord needs to provide to get the pledge fulfilled. The landlord will not be required to contract away his legal right to bring an unlawful detainer action in the future for non-payment of rent if it occurred

again the next month, or his right to maintain an action that is not based on the full payment of costs incurred.

(3) The provider of the pledge must fulfill it within five business days to ensure the landlords are receiving full payment in a timely manner. If the pledge is not fulfilled, the landlord may decide to bring or continue an unlawful detainer action based on non-payment of rent. However, the tenant could still file for an order limiting dissemination of the action, ensuring that the tenant is not punished for the provider's failure to fulfill the pledge.

Preferred Employer Programs

Two sets of options are provided for consideration. The first consists of how preferred employer programs are treated in the context of other unfair housing practices ("Process Options"). The second set consists of what programs are defined as preferred employer programs and what programs are not so defined ("Definition Options").

Process Options

There are three process options. Process option 1, as previously discussed in committee, would require the landlord or the Office of Civil Rights (OCR) to determine preemptively whether a preferred employer program has a disparate impact. Process option 2 would not make all preferred employer programs an unfair practice, only those that are discriminatory. A potential tenant would still have to make a discrimination complaint to OCR to be investigated. The new process option 3 would ban any preferred employer program, with the exception of those already incorporated into a tenant's lease. Renewed lease terms would incorporate the discount, but no new discounts could be issued. This option would remove any burden for the tenant to lodge a complaint and instead guarantee that no preferred employer program ever has the opportunity to be found as discriminatory. Process option 3 would be the simplest and least burdensome on potential tenants and enforcement offices. However, it would prevent landlords from providing preferred employer discounts to any potential tenant, even if the practice was not discriminatory.

Definition Options

The three definition options focus on the "preferred employer program" and exclude from the definition "different terms and conditions provided in city-funded housing or other publicly funded housing for the benefit of city or public employees, housing specifically designated as employer housing which is owned or operated by an employer and leased for the benefit of its employees only."

While definition option 2 does not contain any further exclusions, definition options 1 and 3 each contain a carve-out specifying which kind of programs are excluded from the definition to ensure that regulating or banning preferred employer programs does not result in unintended consequences that undermine the goals of affordable and equitable housing.

Definition option 1 would also exempt "housing for individuals or groups on individuals based on honorably discharged veteran or military status, current or retired members of public law enforcement in good standing, or education providers."

Definition option 3 would exempt "any program affirmatively furthering fair housing." The definitions section would be amended to define "affirmatively furthering fair housing" to include programs that helped homeless persons or low/middle income families find and keep housing, especially members of a protected class, increasing supportive housing, and increasing housing to low-income people with access to job opportunities. This option would also encompass the list of exceptions in definition option 1 and expand it to cover protected classes and populations that are in need of affordable housing.

Definition of "Section 8 or other subsidy program"
Option 2 is intended to achieve the same outcome as option 1—to ensure the definition is broad enough to cover arrangements not specifically entered into as contracts—but retains the distinguishing feature of section 8 and other subsidy programs that separates it from the definition of alternative source of income: payment is made from the third party to the owner, not to the tenant.

Attachments:
Attachment A – Amendment Language Options
Attachment B – June 14 Memo Regarding CB 118686

cc: Kirstan Arestad, Central Staff Executive Director
Dan Eder, Central Staff Deputy Director

Attachment A – Amendment Language Options

First-In-Time Policy Options

Option 1 (proposed June 14)**:**

Proposed addition to Section 3 of CB 118686:

14.08.040

H. It is an unfair practice for a person to fail to:

1. Note the date and time of receipt of a rental application;

2. Offer the tenancy to the first prospective tenant meeting the criteria stated in the written notice required in RCW 59.18.257(1)(a)(ii), except that if a person is required to or chooses to reserve a rental unit or units for low-income tenants who are receiving or qualify for section 8 or other subsidies, this information shall be included in the required notice and the first prospective tenant who meets the criteria stated in the written policy and who are receiving or qualify for section 8 or other subsidies shall be offered the tenancy.

Option 2 (new)**:**

Proposed addition to Section 3 of CB 118686:

14.08.050—First-in-time

A. It is an unfair practice for a person to fail to:

1. Provide notice to a prospective occupant, in writing or by posting in the office of the person leasing the unit or in the building where the unit is physically located, and if existing, on the web site advertising rental of the unit, in addition to the information required by RCW 59.18.257, of:

a. The criteria the owner will use to screen prospective occupants and the minimum threshold for each criterion that the potential occupant must meet to move forward in the application process; including, to the extent reasonably foreseeable, any different or additional criteria that will be used if the owner chooses to conduct an individualized assessment related to criminal records.

b. All information, documentation, and other submissions necessary for the owner to conduct screening using the criteria stated in the notice required in this subsection 14.08.050.A.1.a. A rental application is considered complete when it includes all the information, documentation, and other submissions stated in the notice required in this subsection 14.08.050.A.1.b. Lack of a material omission in the application by a prospective occupant will not render the application incomplete.

c. Information regarding how to request additional time to complete an application because of the need to ensure meaningful access to the application or for a reasonable accommodation and its impact on timing of the receipt of the application, pursuant to subsection 14.08.050.B.

d. The applicability to the available unit of the exceptions stated in this subsection 14.08.050.A.4.a and b.

2. Note the date and time of receipt of a completed rental application. Whether submitted through the mail, electronically, or in person, the date and time to be noted is when the application is received by the owner.

3. Screen completed rental applications in chronological order as required in this subsection 14.08.050.A.2. to determine whether a prospective occupant meets all the screening criteria that is necessary for approval of the application. If after conducting the screening, the owner needs more information than was stated in the notice required in this subsection 14.08.050.A.1.b to determine whether to approve the application or takes an adverse action as described in RCW 59.18.257(1)(c) and decides to conduct an individualized assessment , the application shall not be rendered incomplete. The owner shall notify the prospective occupant in writing of what additional information is needed, and the specified period of time, at least 3 days, that the prospective occupant has to provide the additional information. The owner's failure to provide the notice required in this subsection 14.08.050.A.3 does not affect the prospective occupant's right to 3 days to provide additional information. If the additional information is provided within the specified period of time, the original submission date of the completed application for purposes of determining the chronological order of receipt will not be affected. If the information is not provided by the end of the specified period of time, the owner may consider the application incomplete or reject the application.

4. Offer tenancy of the available unit to the first prospective occupant meeting all the screening criteria necessary for approval of the application. If the first approved prospective occupant does not accept the offer of tenancy for the available unit within 3 days of when

the offer is made, the owner shall review the next completed rental application in chronological order until a prospective occupant accepts the owner's offer of tenancy. This subsection A.4. does not apply when the owner:

a. Is legally obligated to set aside the available unit to serve specific vulnerable populations;

b. Voluntarily agrees to set aside the available unit to serve specific vulnerable populations, including but not limited to homeless persons, survivors of domestic violence, persons with low income, and persons referred to the owner by non-profit organizations or social service agencies.

B. If a prospective occupant requires additional time to submit a complete rental application because of the need to ensure meaningful access to the application, including but not limited to the need for a translator or an application in a different language, or for a reasonable accommodation, the prospective occupant must provide notice to the owner. The date and time of this notice will serve as the date and time of receipt for purposes of determining the chronological order of receipt pursuant to this subsection 14.08.050.A.2. Upon submitting the completed rental application, to maintain the prospective occupant's chronological position noted at the time of notice, the owner may require that the prospective occupant provide reasonable documentation of the need for additional time within three days. If reasonable documentation is not provided within three days, the owner may change the date and time of receipt from when notice was provided to the date and time the complete application is submitted.

Community Pledges Options

Option 1 (proposed June 14)**:**

Proposed addition to Section 3 of CB 118686:

14.08.040

H. It is an unfair practice for a person to fail to:

3. Accept a written pledge or commitment by a section 8 or other subsidy program provider to pay for past due or current rent, sufficient to allow the tenant to be current on all rent due once the pledge or commitment is fulfilled.

Option 2 (new)**:**

Proposed addition to Section 3 of CB 118686:

14.08.020

"Housing costs" means the compensation or fees paid or charged, usually periodically, for the use of any housing unit. For purposes of this Chapter 14.08, housing costs include the basic rent charge and any periodic or monthly fees for other services paid to the owner by the occupant, but do not include utility charges that are based on usage and that the occupant 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.

14.08.040

H. It is an unfair practice for a person to fail to:

1. Accept a written pledge or commitment by a section 8 or other subsidy program to pay for past due or current housing costs, and court costs or reasonable attorney's fees already incurred and directly related to recovery of the unpaid housing costs lawfully owed, under the following conditions:

a. By itself or in combination with: other payments from a section 8 or other subsidy program, and any verifiable source of income including but not limited to wages, salaries, or other compensation for employment, and all alternative sources of income, the written pledge or commitment is sufficient to allow the occupant to become current on all housing costs, and court costs or reasonable attorney's fees already incurred and directly related to the recovery of the unpaid housing costs lawfully owed once the pledge or commitment is fulfilled.

b. The written pledge or commitment is received by the owner at any time prior to:

i. The issuance of a notice served under RCW 59.12.030(3) or (4) or 59.04.040, or

ii. The end of the time period allowed for compliance in notice served under RCW 59.12.030(3) or (4) or 59.04.040.

c. The written pledge or commitment does not commit the owner to any conditions, including any agreement not to pursue future unlawful detainer actions, except those requiring the owner to timely provide any information necessary for payment;

d. The section 8 or other subsidy program provider commits to paying the written pledge or commitment to the owner within five business days of issuing the written pledge or commitment to the owner. The payment shall be made directly from the section 8 or other subsidy program provider to the owner, where possible.

An unlawful detainer action that results from the failure of a section 8 or other subsidy program provider to timely pay an issued written pledge or commitment is good cause for an order limiting dissemination of the unlawful detainer action as provided in the new section of RCW 59.18, codified by Engrossed Senate Bill 6413, section 3, effective June 9, 2016.

Preferred Employer Program Process Options

Process Option 1 (proposed June 14)**:** Preemptive Determinations

Proposed additions to Section 2 of CB 118686:

14.08.020

"Discriminatory effect" means a practice that actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, gender identity, political ideology, honorably discharged veteran or military status, alternative source of income, participation in a Section 8 or other subsidy program, the presence of any disability, or the use of a service animal by a disabled person.

"Legally sufficient justification" means it is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent and those interests could not be served by another practice that has a less discriminatory effect. A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.

"Preferred employer program" means [see Definition Options on Page 10]

Proposed addition to Section 3 of CB 118686:

14.08.040

H. It is an unfair practice for any person to advertise, institute, or maintain a preferred employer program unless:

1. The person conducts an assessment and submits it to the Director, or submits a request to the Director to conduct an assessment to determine:

a. Whether the program has a discriminatory effect, and if so,
b. Whether the program is supported by a legally sufficient justification; and

2. The Director makes a finding of fact and determination of no reasonable cause for believing that an unfair practice has been, is being or is about to be committed under subsection 14.08.040. The Director shall promulgate rules to provide guidance for conducting the assessment required by subsection 14.08.040.H.1.

I. Any preferred employer program that is part of an unexpired rental agreement upon the effective date of this legislation may continue until the end of the current lease term but the landlord may not renew the program in any form after expiration of the lease unless section 14.08.040.H.2 has occurred.

Process Option 2 (proposed June 14): Complaint-based Approach

Proposed addition to Section 2 of CB 118686:

14.08.020

"Preferred employer program" means [see Definition Options below]

Proposed addition to Section 3 of CB 118686:

14.08.040

A. It is an unfair practice for any person to discriminate by:

6. Advertising, instituting, or maintaining a preferred employer program.

Process Option 3 (new)**:** Complete Ban

Proposed addition to Section 2 of CB 118686:

14.08.020

"Preferred employer program" means [see Definition Options below]

Proposed addition to Section 3 of CB 118686:

14.08.040

H. It is an unfair practice to advertise, institute, or maintain a preferred employer program. Any preferred employer program that is part of an unexpired rental agreement upon the effective date of this legislation may continue until the occupant vacates the unit and the rental unit is terminated.

Preferred Employer Program Definition Options

Definition Option 1 (proposed June 14):

"Preferred employer program" means any policy or practice in which a person provides different terms and conditions, including but not limited to discounts or waiver of fees or deposits, in connection with renting, leasing, or subleasing real property to a prospective tenant because the prospective tenant is employed by a specific employer. "Preferred employer program" does not include different terms and conditions provided in city-funded housing or other publicly funded housing for the benefit of city or public employees, housing specifically designated as employer housing which is owned or operated by an employer and leased for the benefit of its employees only, housing for individuals or groups on individuals based on honorably discharged veteran or military status, current or retired members of public law enforcement in good standing, or education providers.

Definition Option 2 (new):

"Preferred employer program" means any policy or practice in which a person provides different terms and conditions, including but not limited to discounts or waiver of fees or deposits, in connection with renting, leasing, or subleasing real property to a prospective occupant because the prospective occupant is employed by a specific employer. "Preferred employer program" does not include different terms and conditions provided in city-funded housing or other publicly funded housing for the benefit of city or public employees, housing specifically designated as employer housing which is owned or operated by an employer and leased for the benefit of its employees only.

Definition Option 3 (new):

"Preferred employer program" means any policy or practice in which a person provides different terms and conditions, including but not limited to discounts or waiver of fees or deposits, in connection with renting, leasing, or subleasing real property to a prospective occupant because the prospective occupant is employed by a specific employer. "Preferred employer program" does not include different terms and conditions provided in city-funded housing or other publicly funded housing for the benefit of city or public employees, housing specifically designated as employer housing which is owned or operated by an employer and leased for the benefit of its employees only, or any program affirmatively furthering fair housing.

"Affirmatively furthering fair housing" means assisting homeless persons to obtain appropriate housing and assisting persons at risk of becoming homeless; retention of the affordable housing stock; and increasing the availability of permanent housing in standard condition and affordable cost to low-income and moderate-income families, particularly to members of disadvantaged minorities, without discrimination on the basis of race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, gender identity, political ideology, honorably discharged veteran or military status, alternative source of income, participation in a Section 8 program or other subsidy program, the presence of any disability or the use of a service animal by a disabled person. "Affirmatively furthering fair housing" also means increasing the supply of supportive housing, which combines structural features and services needed to enable persons with special needs, including persons with HIV/AIDS and their families, to live with dignity and independence; and providing housing affordable to low-income persons accessible to job opportunities.

Definition of "Section 8 or other subsidy program" Options

Option 1 (proposed June 14)**:**

Further proposed change (shown in double strikethrough): "Section 8 or other subsidy program" means short or long term federal, state or local government, private nonprofit, or other assistance programs in which a tenant's rent is paid either partially by the ~~government~~ program ~~(through a direct contract between the government program and the owner or lessor of the real property),~~ and partially by the tenant or completely by the program. Other subsidy programs include but are not limited to HUD-Veteran Affairs Supportive Housing (VASH) vouchers, Housing and Essential Needs (HEN) funds, and short-term rental assistance provided by Rapid Rehousing subsidies.

Option 2 (new)**:**

Further proposed change (shown in double strikethrough): "Section 8 or other subsidy program" means short or long term federal, state or local government, private nonprofit, or other assistance programs in which a tenant's rent is paid either partially by the ~~government~~ program (through a direct ~~contract~~ arrangement between the government program and the owner or lessor of the real property), and partially by the tenant or completely by the program. Other subsidy programs include but are not limited to HUD-Veteran Affairs Supportive Housing (VASH) vouchers, Housing and Essential Needs (HEN) funds, and short-term rental assistance provided by Rapid Rehousing subsidies.

Seattle City Council

Central Staff - Memorandum

Date: June 14, 2016

To: Members of the Committee on Civil Rights, Utilities, Economic Development, and Arts

From: Asha Venkataraman, Council Central Staff

Subject: Council Bill 118686: Source of Income Discrimination issues and amendments

Council Bill (CB) 118686 was introduced and referred to the CRUEDA committee, which was briefed by the Office of Civil Rights (OCR) on May 24, 2016. Passage of CB 118686 would codify a Housing Affordability and Livability Agenda (HALA) recommendation to prohibit discrimination against potential tenants based on their source of income. This memo provides a summary of the bill as introduced and lays out provisions potentially warranting amendment, along with possible implementation issues.

Bill Summary

Under the City's current fair housing law (SMC 14.08), it is already illegal to discriminate against a renter based on their use of a voucher issued by a public housing authority (PHA), under which the PHA pays a landlord the difference between a unit's rent and 30 percent of a household's annual income (commonly known as Section 8 housing vouchers).[1] This legislation would expand that protection to prohibit discrimination based on other categories of verifiable sources of income, including child support payments, Social Security, Supplemental Security Income, unemployment insurance, short-term rental assistance, or veteran's benefits.

The main changes the bill makes to the SMC are as follows:

- Including alternative sources of income and subsidy programs other than Section 8 as bases upon which a person cannot discriminate;
- Newly defining "alternative source of income" as lawful and verifiable income derived from sources other than wages, salaries, or other employment related compensation
    - This definition is intended to describe income paid directly to a person rather payment to a landlord for rent.
- Revising the definition for Section 8 programs to include other subsidy programs, short- or long-term, provided by private non-profits or other assistance programs and not just government assistance
    - This definition is intended to describe payments made from a third party to a landlord on behalf of the tenant for rent Rental payment to the landlord
- Making it an unfair practice to apply income screening that does not:

[1] This program is authorized by provisions in Section 8 of the U.S. Housing Act of 1937, regulated under 24 CFR Part 982 and 983, and administered by the U.S. Department of Housing and Urban Development (HUD).

- Reduce by the amount of a subsidy the amount of rent the tenant is responsible for
- Include all sources of income.

Potential Amendments

The text of the amendments discussed below are provided in the ordinance in Attachments A, B, and C to this memo.

1. Addition of language to exclusions in SMC 14.08.190 (Attachment A Page 18)

This amendment will help to ensure that preferences can be given when required by a specific program, such as set asides of low income units.

Proposed addition to Section 7 of CB 118686: Nothing in this chapter shall: "K. Be interpreted to limit a person's obligation or ability to lease or sell real property which has been designated for certain types of tenants or purchasers as part of a government sponsored or legally required low-income housing program or policy, subsidy, voucher or tax-related program for the provision of affordable housing, to such tenants intended to be served or benefited by such designation or program;"

2. Definition of "Section 8 or other subsidy program" (Attachment A Page 9)

This amendment would strengthen the definition by ensuring that all arrangements wherein a tenant's rent is sent from a subsidy program to a landlord are covered, not just those in direct contract relationships, as to prevent any legal loopholes.

Currently codified language: "Section 8 program" means a federal, state or local government program in which a tenant's rent is paid partially by the government program (through a direct contract between the government program and the owner or lessor of the real property), and partially by the tenant.

Change currently proposed in Section 2 of CB 118686: "Section 8 or other subsidy program" means short or long term federal, state or local government, private nonprofit, or other assistance programs in which a tenant's rent is paid either partially by the ~~government~~ program (through a direct contract between the ~~government~~ program and the owner or lessor of the real property), and partially by the tenant or completely by the program. Other subsidy programs include but are not limited to HUD-Veteran Affairs Supportive Housing (VASH) vouchers, Housing and Essential Needs (HEN) funds, and short-term rental assistance provided by Rapid Rehousing subsidies.

Further proposed change (shown in double strikethrough): "Section 8 or other subsidy program" means short or long term federal, state or local government, private nonprofit, or other assistance programs in which a tenant's rent is paid either partially by the ~~government~~ program ~~(through a direct contract between the government program and the owner or lessor of the real property),~~ and partially by the tenant or completely by the program. Other subsidy programs include but are not limited to HUD-Veteran Affairs Supportive Housing (VASH) vouchers, Housing and Essential Needs (HEN) funds, and short-term rental assistance provided by Rapid Rehousing subsidies.

Final language: "Section 8 or other subsidy program" means short or long term federal, state or local government, private nonprofit, or other assistance programs in which a tenant's rent is paid either partially by the program and partially by the tenant or completely by the program. Other subsidy programs include but are not limited to HUD-Veteran Affairs Supportive Housing (VASH) vouchers, Housing and Essential Needs (HEN) funds, and short-term rental assistance provided by Rapid Rehousing subsidies.

3. Definition of "verifiable" (Attachment A Page 10)

This amendment clarifies the proposed definition to mean source of income.

Change currently proposed in CB 118686: "Verifiable" means the source can be confirmed as to its amount or receipt.

Further proposed change (shown in double underline): "Verifiable" means the source of income can be confirmed as to its amount or receipt.

4. First in time policy (Attachment A Page 13)

This amendment will require landlords to offer the rental unit to the first person who meets all of the criteria set out in the landlord's written policy. Fair housing organizations often recommend first in time policies to landlords as a best practice to ensure that unconscious biases do not result in discrimination when a landlord is deciding between multiple tenants who qualify for a rental unit.

Proposed addition to Section 3 of CB 118686: 14.08.040 "H. It is an unfair practice for a person to fail to:

1. Note the date and time of receipt of a rental application;

2. Offer the tenancy to the first prospective tenant meeting the criteria stated in the written notice required in RCW 59.18.257(1)(a)(ii), except that if a person is required to or chooses to reserve a rental unit or units for low-income tenants who are receiving or qualify for section 8 or other subsidies, this information shall be included in the required notice and the first prospective tenant who meets the criteria stated in the written policy and who are receiving or qualify for section 8 or other subsidies shall be offered the tenancy."

Implementation

Use of a first in time policy affects the a landlord's ability to exercise discretion when deciding between potential tenants that may be based on factors unrelated to whether a potential tenant is a member of a protected class. Additionally, a first in time policy may favor potential tenants located geographically closer to a unit, so requiring a landlord to accept electronic submission of applications and treat them the same way as a paper submission could be an important consideration.

5. Addressing community pledges (Attachment A Page 14)

This amendment would ensure that a landlord honors pledges to pay a portion or all of a tenant's rent from community organizations.

Proposed addition to Section 3 of CB 118686: 14.08.040 "H. It is an unfair practice for a person to fail to:

> 3. Accept a written pledge or commitment by a section 8 or other subsidy program provider to pay for past due or current rent, sufficient to allow the tenant to be current on all rent due once the pledge or commitment is fulfilled."

6. Addressing landlords completing rental subsidy paperwork (Attachment A Page 14)

This amendment would essentially require a landlord to complete their portion of rental subsidy applications in a timely manner upon request by a potential or current tenant. It would help to ensure that potential tenants or occupants actually receive the assistance they need in a timely manner and are not rejected on the sole basis that part of the needed paperwork was not completed by a landlord.

Proposed addition to Section 3 of CB 118686: 14.08.040 **"**H. It is an unfair practice for a person to:

4. Fail to cooperate with a potential or current occupant in completing and submitting required information and documentation for the potential tenant or occupant to be eligible for or to receive rental assistance from Section 8 or other subsidy program;"

7. Preferred employer programs (Attachments B and C)

A preferred employer program refers to any policy or practice in which an owner provides different terms and conditions, including discounts, in connection with renting, leasing, or subleasing real property to a prospective tenant because the prospective tenant is employed by a specific employer. As you may be aware, OCR recently issued guidance explaining how it plans to address any complaints of discrimination based on the use of a preferred employer program. There is interest in addressing the potential for preferred employer programs to cause disparate impact on protected classes in legislation rather than only in guidance.

Two options to incorporate the potential disparate impact of preferred employer programs are proposed below. Both of these options contain the same definition of what a preferred employer program entails, with specific exemptions.

Option 1: Preemptive determinations (Attachment B)

This option would make preferred employer programs an unfair practice if an owner or lessor advertises or uses such a program without conducting an assessment and submitting to OCR or requesting OCR to conduct an assessment of whether it would cause a disparate impact on a

protected class. In either case, the assessment would be conducted in accordance with OCR's guidance.

Upon conducting the assessment and submission to OCR or OCR's completion of the assessment, OCR would be required to make a finding of fact and determination that there is no reasonable cause for believing that an unfair practice has been, is being, or is about to be committed. Provision for making such a finding of fact and determination of reasonable cause is already in the code. At that point, the provisions already in the code would govern further action by the Director and the owner or lessor to remedy or appeal. In the circumstance that any terms and conditions in the preferred employer program are contained in an unexpired lease when this legislation goes into effect, those terms can remain effective but cannot be renewed unless the requisite finding of fact and determination have been made.

This intent of this amendment is to place the onus of ensuring discrimination did not result from a preferred employer program on the landlord and OCR rather than on a tenant making a complaint to OCR.

Implementation

The proposed language could create several implementation issues. As a preliminary issue, the provisions are unlike those already in this section of the code, as the prohibition against preferred employer programs is preemptive rather than based on a complaint from someone claiming discrimination from the policy in place. As such, OCR might be conducting an analysis based on implementation of a potential program rather than the effects from an existing program

Second, the prohibition would create two circumstances under which a preferred employer program might be an unfair practice. The first would make such a program an unfair practice if the landlord fails to conduct an assessment or request that OCR conduct an assessment. The second would make such a program an unfair practice if after the assessment was completed, OCR found that there was reasonable cause to believe that the program was an unfair practice. It is unclear whether both of these unfair practices would result in the same level of enforcement if use continued.

Third, the process by which OCR would conduct an analysis of a potential preferred employer program could overlap with liability for such a program, which could create a chilling effect for those landlords voluntarily coming to OCR to assess such a program. The current framework provides that a charging party or the Director charge a landlord with commission of an unfair practice. OCR then conducts an investigation to determine if such an unfair practice has occurred. The charge provides OCR with subpoena powers to obtain information. However, if a landlord were to come to OCR for an assessment without the employer's or other demographic data, OCR would need to acquire the data to conduct an analysis. But without charging the landlord and alleging an unfair practice, OCR would be unable to subpoena the data necessary for a complete analysis. To acquire that ability, OCR would need to charge the landlord, resulting in OCR pursuing enforcement actions against a landlord who had voluntarily come to OCR for advice. This may result in discouraging landlords from seeking advice about how to avoid discrimination.

Fourth, conducting a preemptive analysis would require a significant level of OCR resources and staff. The current structure of this existing section of code is complaint based, which results in the claim of discrimination by a person belonging to a specific protected class. However, a preemptive determination would require OCR to analyze every protected class to ensure no disparate impact resulted. An effort to make this determination for the sixteen classes currently protected by the SMC for every potential policy that needs assessment rather than the limited number of classes a person making a claim might be a member of would require a substantial increase resources used by OCR.

Lastly, there are several additional issues that need to be addressed with such a preemptive determination, such as the amount of time such a determination would last, the effect of a preemptive determination on a later complaint of discrimination based on the same preferred employer program, and the ability of the landlord to acquire data to conduct such an assessment of disparate impact.

Proposed additions to Section 2 of CB 118686: "Discriminatory effect" means a practice that actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, gender identity, political ideology, honorably discharged veteran or military status, alternative source of income, participation in a Section 8 or other subsidy program, the presence of any disability, or the use of a service animal by a disabled person.

"Legally sufficient justification" means it is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent and those interests could not be served by another practice that has a less discriminatory effect. A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.

"Preferred employer program" means any policy or practice in which a person provides different terms and conditions, including but not limited to discounts or waiver of fees or deposits, in connection with renting, leasing, or subleasing real property to a prospective tenant because the prospective tenant is employed by a specific employer. "Preferred employer program" does not include different terms and conditions provided in city-funded housing or other publicly funded housing for the benefit of city or public employees, housing specifically designated as employer housing which is owned or operated by an employer and leased for the benefit of its employees only, housing for individuals or groups on individuals based on honorably discharged veteran or military status, current or retired members of public law enforcement in good standing, or education providers.

Proposed addition to Section 3 of CB 118686:

14.08.040 "H. It is an unfair practice for any person to advertise, institute, or maintain a preferred employer program unless:

1. The person conducts an assessment and submits it to the Director, or submits a request to the Director to conduct an assessment to determine:

a. Whether the program has a discriminatory effect, and if so,
b. Whether the program is supported by a legally sufficient justification; and

2. The Director makes a finding of fact and determination of no reasonable cause for believing that an unfair practice has been, is being or is about to be committed under subsection 14.08.040. The Director shall promulgate rules to provide guidance for conducting the assessment required by subsection 14.08.040.H.1.

I. Any preferred employer program that is part of an unexpired rental agreement upon the effective date of this legislation may continue until the end of the current lease term but the landlord may not renew the program in any form after expiration of the lease unless section 14.08.040.H.2 has occurred."

Option 2: Complaint based approach (Attachment C)

This option would make use of a preferred employer program an unfair practice if it discriminated against a protected class. It would not be an outright ban, but instead, a ban on those programs that are discriminatory. It is framed similarly to the unfair practices already identified in the housing code. Landlords would be allowed to use a preferred employer program as long as it was not discriminatory, and would not need to acquire any prior approval from OCR. Upon a complaint of discrimination by a party, the assessment of whether an unfair practice occurred would follow the process currently provided for in the housing code.

Implementation

This option places the onus on the potential tenant to claim discrimination. Thus, a preferred employer program could be discriminatory but until a potential tenant made a complaint to OCR or OCR conducted testing or investigation, the program would continue.

Proposed addition to Section 2 of CB 118686: "Preferred employer program" means any policy or practice in which a person provides different terms and conditions, including but not limited to discounts or waiver of fees or deposits, in connection with renting, leasing, or subleasing real property to a prospective tenant because the prospective tenant is employed by a specific employer. "Preferred employer program" does not include different terms and conditions provided in city-funded housing or other publicly funded housing for the benefit of city or public employees, housing specifically designated as employer housing which is owned or operated by an employer and leased for the benefit of its employees only, housing for individuals or groups on individuals based on honorably discharged veteran or military status, current or retired members of public law enforcement in good standing, or education providers.

Proposed addition to Section 3 of CB 118686: 14.08.040 A. It is an unfair practice for any person to discriminate by:

"6. Advertising, instituting, or maintaining a preferred employer program."