

July 20, 2018

MEMORANDUM

To: Members of the Civil Rights, Economic Development, Utilities & Arts Committee
From: Asha Venkataraman, Council Central Staff
Subject: CB 119316: Persons Required to Make Reasonable Accommodations

On July 24, the Civil Rights, Economic Development, Utilities & Arts Committee (CRUEDA) will discuss Council Bill (CB) 119316, a bill amending the Open Housing Ordinance in [Chapter 14.08](#) of the Seattle Municipal Code (SMC) to broaden the type of parties who are responsible for providing reasonable accommodations to tenants with disabilities under specific conditions.

This memorandum: (1) provides background on existing City law, (2) describes the litigation prompting this legislation, and (3) outlines the content and impacts of CB 119316.

Background

Chapter 14.08 of the SMC describes fair housing practices, including promoting the availability and accessibility of housing and real property to all persons. [Section 14.08.040.D](#) specifically provides that “[i]t is an unfair practice to prohibit reasonable modifications needed by a disabled tenant” and for a

landlord to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy any dwelling, or to refuse to allow a person to make alterations or additions to existing premises occupied or to be occupied by a disabled person which are necessary to make the rental property accessible by disabled persons, under [] [certain] conditions.

The application of these protections to the Seattle Housing Authority (SHA) prompted litigation and a decision from the Court of Appeals for the State of Washington.¹ The decision opined on the responsibilities of the Seattle Housing Authority (SHA) under the SMC, given that SHA performs two separate functions in providing public housing: it is both a landlord and an administrator of the Section 8 housing voucher program. As an administrator, SHA provides vouchers to eligible participants for a rent subsidy, which pays a percentage of the market rate for the unit the participant chooses. The amount of the subsidy is based on the unit size for which the participant is eligible, not the ultimate unit the participant chooses.

In this case, the complainant was eligible for a voucher to cover 30 percent of the rent for a studio apartment, but she requested a voucher with a subsidy appropriate for a one-bedroom

¹ *Seattle Hous. Auth. v. City of Seattle*, 416 P.3d 1280 (2018), available at <http://www.courts.wa.gov/opinions/pdf/754556.pdf>.

apartment based on her disability. SHA refused to grant the request, and she claimed that SHA's refusal denied her a reasonable accommodation to which she was entitled and in doing so, violated Section 14.08.040.D.

The Court decided that based on a plain reading of the language in the SMC and the statutory context supporting legislative intent to cover only the landlord-tenant relationship, 14.08.040.D did not apply to SHA in its role as a voucher administrator. The Court also noted that "if the City wishes to extend the unfair practice requirement of SMC 14.08.040.D to include a requirement that Section 8 program administrators like SHA make reasonable accommodation....it can amend the SMC accordingly."² This legislation is in direct response to the case.

CB 119316

This legislation makes several changes to the SMC. First, it separates the obligation to provide reasonable accommodations from the obligation to provide reasonable modifications. As currently codified, the requirements regarding reasonable modifications and reasonable accommodations are combined, sometimes to confusing effect, and separating the two will clarify the different responsibilities pursuant to each.

Second, it revises the responsible party for permitting reasonable modifications from "landlord" to "person." This change broadens the applicability of the provision, ensuring that anyone who can grant a reasonable accommodation is covered by the law, not just landlords.

Third, it includes a Section 8 or other subsidy program administrator in the definition of "person" and defines "Section 8 or other subsidy program administrator" to explicitly ensure the SMC applies in the case of parties who are administrators but not landlords or a party such as SHA who is both landlord and administrator. Doing so will ensure that situations that prompted the litigation with SHA will not reoccur. Moving forward, City law will require SHA and any other voucher program administrator to provide reasonable accommodations to persons with disabilities as appropriate.

Lastly, it adds the term "prospective tenant" to any references to "tenant" to clarify that those applying for units and trying to obtain reasonable modifications are also protected. The Office for Civil Rights currently enforces this law protecting prospective tenants, and this amendment will make that protection explicit.

cc: Kirstan Arestad, Central Staff Director
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² *Seattle Hous. Auth. v. City of Seattle*, 416 P.3d at 1286.