From: Kim at MAREI Tucker
To: Public Testimony
Subject: Fwd: Opposition to Ordinance 231019
Date: Wednesday, December 13, 2023 2:56:13 PM

---------- Forwarded message ---------
From: **Attorney "Denny" Dobbins** <jddobbinslaw@gmail.com>
Date: Mon, Dec 11, 2023 at 1:48 PM
Subject: Opposition to Ordinance 231019
To: <Mayor@kcmo.org>, <Kevin.ONeill@kcmo.org>, <nathan.willett@kcmo.org>, <lindsay.french@kcmo.org>, <wes.rogers@kcmo.org>, <Melissa.Robinson@kcmo.org>, <crispin.rea@kcmo.org>, <Eric.Bunch@kcmo.org>, <darrell.curls@kcmo.org>, <Ryana.Parks-Shaw@kcmo.org>, <Andrea.Bough@kcmo.org>, <johnathan.duncan@kcmo.org>

Mr. Mayor and Council Members:

Opposition to Ordinance 231019

My name is Denny Dobbins. I am an attorney in Missouri, Kansas, and Arizona. My firm represented over 120,000 units (at the same time) in the Phoenix metro area and I have seen pretty much everything there is to see in the landlord-tenant relationships arena. I have been in the housing industry for the past 40 years. I have been a HUD Commissioner; highly involved in drafting Landlord Tenant Legislation; drafting County, City and Municipal Landlord Tenant ordinances, and; writing on the subject in periodicals, newspapers, real estate schools and associations. I have taught thousands of owners, managers, and tenants in landlord tenant law and relationships. I have reviewed thousands of leases and written hundreds more. I have taught discrimination law for over thirty (30) years across the entire Nation, including in Kansas City. I have handled many discrimination cases with the attorney general. I have tried hundreds of landlord tenant cases. I am a published author on Landlord and Tenant relationships and procedures, i.e., *12 Principles of Highly Effective Owners, Landlords and Property Managers.*

In my experience in the field, Ordinance 231019 is a mistake and will have negative consequences upon landlords, tenants, and the community.

Specifically, Sec 38-1 (31) - source of income through government assistance or payment such as federal Housing Choice Vouchers as authorized by Section 8 of the Housing Act of 1937, and making violating this section punishable by a fine, or worse, is just a terrible idea.

I understand that requiring landlords to recognize most of the listed sources of income set forth in the proposed ordinance seems to make sense. However, forcing a landlord to recognize and accept payment (source of funds) from a section 8 voucher is not just requiring a landlord to accept that form of payment, but it is forcing all landlords to accept being in the entire section 8 program, along with all the issues and problems that come with it. That is

devious, cunning, underhanded, and an unconstitutional trick on the public to try to force all landlords to take part in a federal government program that was not designed to incorporate and shackle all landlords, but rather, those that want to take part. The section 8 program completely controls the landlord tenant relationship – it is much more than just controlling the source of funds.

This ordinance would cause the city to violate constitutional principles forcing landlords to be part of a program for which landlords may not want to be part of by cloaking the ordinance in this fashion. The courts have been clear on this issue. A city cannot put in place ordinances that are not necessary to accomplish a city's purposes. Kansas City claims for its purpose that it has a substantial interest in reducing homelessness by increasing housing opportunity for renters, regardless of lawful source of income, and that it must compel all landlords to be governed by a Federal Section 8 program that goes way beyond a source of income test, saddling landlords with a plethora of rules and regulations. The city has shown nothing to support the concept that all landlords must be part of the Federal Section 8 program to accomplish its objectives, nor can it. The city will wind up in court, and the City will lose.

The city is claiming that current voucher holders do not have ample opportunities for housing with landlords that have voluntarily accepted participation in the section 8 program. The burden is on the city to prove that forcing landlords to be completely governed by section 8 is necessary to accomplish its objectives, and there is simply no way that the city can do that. The City cannot meet that burden.

Likewise, the proposed ordinance states, "… the program does not work as intended for many participants, primarily because property owners will not accept their vouchers, **leading to tenants not being able to utilize the voucher…".** This is simply a false, conclusory statement. Again, the city has absolutely no data showing that section 8 voucher holders cannot find landlords willing to participate in the section 8 program, and that tenants cannot use their vouchers because there are not enough landlords that will accept their vouchers (there are many landlords that like using the section 8 program). This is a fabrication and is not true. And even if that were true, if the City wants to take away landlords' rights to be able to choose whether or not to participate in the fully section 8 program, with no grandfathering clause for currently built residential structures, in my opinion, based on the constitution and case law, it is an unconstitutional taking and it will wind up in court because forcing of ALL landlords into the WHOLE section 8 program (not just the source of funds from the program because the source of fund and the actual program go hand and hand) the proposed ordinance cannot survive the rational means test.

The Washington Supreme Court in the case of *Yim, et al; v. City of Seattle 2023*, held that the city's Ordinance was unconstitutional as a reasonable means of achieving the city's objectives. The city's means of achieving the city's objectives were not reasonable in Seattle, and means to reach its objectives are not reasonable in the KC proposed ordinance either. Get ready to waste a great deal of the KC citizens' tax money on an ill-conceived ordinance.

Forcing ALL landlords into the section 8 program (all of it) is not a reasonable means to accomplish the city's objectives. It may be even easier to show unconstitutionality in this proposed ordinance as the city cannot even show that voucher holders need ALL landlords to be forced into the section 8 program, and it will be shown that what the city is doing is not about the source of funds, but rather about the city forcing a separate government program upon all landlords – it's not about the source of funds, but about the baggage that comes with

the source of funds. There are less intrusive means and more reasonable ways to accomplish the City's objectives. If it were just about funds, it would be no problem. But that is not really what the city is trying to do. That part of the ordinance is a sham and a power grab.

As a former HUD Commissioner, it is my experience that what the city is trying to do is not necessary at all and certainly not reasonable. Voucher holders have no problem finding housing to use their vouchers. The real problem is that tenants need more vouchers. The city is using this issue as a guise as a way to scare council members into voting for this unnecessary provision which is an unrealistic, unreasonable, and unconstitutional ordinance. The city has no compelling need to force landlords to not accept the WHOLE section 8 program or to burden landlords with a program that they may have no desire in which to participate. The city does not seem to understand that it is not about the source of funds, it is about the other parts of the section 8 program as a mandate. I do not believe the Courts will find this ordinance to be reasonable means to reach the city's objectives.

If you pass this ordinance the ramifications will be the opposite of its stated Objectives, as :

1. The city is telling housing investors to simply go to another city where barriers to entry are not stifling, leaving a massive hole in the availability of affordable housing, and/or;
2. For some properties, the really good Landlords will be forced into the section 8 program and they will just sell their properties, and then the properties will blight, and/or;
3. Rent rates will increase to the degree that the very people the city thought the city would help by this ordinance will have less housing selection. The Landlords will make capital improvements, raise their rent rates out of the section 8 voucher grasp, and cause the prices to go up for what are now affordable section 8 housing options, thereby creating less inventory for the poor. You will end up with nicer properties in the city and less housing for the poor – maybe that is really the City's end goal. This is a brilliant strategy to get the poorer among us to move to a different city. I assume that is not what the city wants to happen – but this is the effect. Voucher holders already cannot afford high end properties. This will leave low income renters a harder task, and not easier, for them to find housing to meet the section 8 guidelines. Current midrange units will go up in price and out of the reach of the section 8 voucher program leaving less availability to section 8 voucher holders all because the city is overreaching. Those that do not want the burden of being forced into the section 8 program will find a way to get out of the section 8 mandate by selling off their properties, getting out of the business of renting, and/or just raising their rent prices to avoid the mandate.
4. The city will be sucked into a very expensive Court battle, costing taxpayers a loss of a a great deal of money.

Conclusion and Recommendations:

Table this issue. Get all of the stakeholders together and find another methodology to avoid the negative consequences. Collect some data and think through the idea of reasonableness to accomplish the city's objectives to help avoid a lawsuit. If you pass this ordinance, it should be amended to specifically carve out vouchers as authorized by Section 8 of the Housing Act of 1937, so that it is clear that this is not recognized as a source of income under the definition

section and that it is not part of the ordinance, in order to avoid the unintended consequences of the currently written language.

Thank you for your time.

--
Attorney J. D. "Denny" Dobbins
10801 Mastin, Suite 790
Woods Corporate Center
Overland Park, Kansas 66210
913-914-7979

Attorney J. D. "Denny" Dobbins
4140 East Baseline Road, Suite 208
Mesa, Arizona 85206
480-241-9129