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TO: Montgomery County Clients

FROM: Sharon M. Goley, Esq.

DATE: July 2, 2009

SUBJECT: **Permissibility of Employee Specific Rental Discounts**

As you may be aware, the Montgomery County Attorney's Office recently issued a memorandum on June 15, 2009, in which it reversed its earlier position effectively classifying employee specific rental discounts as a violation of Chapter 27, Human Rights and Civil Liberties. Landlords in Montgomery County are now permitted to offer rental discount programs targeting specific groups of employees, (i.e. military, government), without violating the County's "source of income" prohibitions outlined in Chapter 27. (See attached memorandum.)

If you have any questions and or concerns regarding this change, please do not hesitate to contact us.

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JUN 17 2009

DEPARTMENT OF HOUSING &
COMMUNITY AFFAIRS



Isiah Leggett
County Executive

Leon Rodriguez
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: James L. Stowe, Director, Montgomery County Office of Human Rights
Richard Y. Nelson, Jr., Director, Department of Housing and Community Affairs

FROM: Nancy S. Appel, Assistant County Attorney *NDA*

VIA: Leon Rodriguez, County Attorney *LR/NA*

DATE: June 15, 2009

RE: Permissibility of Landlord Rental Discounts Under County Law

The Office of the County Attorney has been requested to issue a brief opinion to confirm that Chapter 27, Human Rights and Civil Liberties, permits landlords to offer rental discount programs, targeting specific groups of employees, without violating the County's source of income prohibitions in Chapter 27. Although County law prohibits discrimination based on source of income, rental discount programs do not fall within the scope of this prohibition¹.

There are two reasons that rental based discounts comply with the County's Human Rights and Civil Liberties law. First, the purpose of the County's law is to promote affordable housing for its residents; to deprive landlords of an avenue to provide an increased stock of affordable housing thwarts the goals of promoting fair and affordable housing. Second, County law does not include "occupation" as a protected class which triggers anti-discrimination enforcement activity.

Allowing Rental Discounts Is Consistent With Federal And County Law

Originally created by the Housing and Community Development Act of 1974, the Section 8 Housing Assistance Payments Program enables low-income certificate holders to pay 30% of their income for a privately owned apartment that rents at or below a locally established

¹ The hypothetical violation is that individuals will be offered discounts based on their affiliation with a specific employer, who pays that employee's salary, or in other words - the employee receives the discount because of income from a specific employer.

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Fair Market Rent. *42 U.S.C. §1437f*. HUD, through local public housing authorities (PHAs) subsidizes participating landlords by paying them the difference between the tenant's contribution and the rental price. The subsidy paid by the PHA to the landlord is one "source of income" used by the tenant to pay for Section 8 Housing. *24 CFR §5.100 et.seq.* The goal of the Section 8 Program is to enable low to moderate income tenants to enter the private market and find housing of their choice provided that the housing complies with the program requirements set by HUD.

Working with localities to increase the availability of affordable housing for as many citizens as possible is one of the many policies of Section 8: "It is the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to remedy the ... acute shortage of decent, safe, and sanitary dwellings ... and, consistent with the objectives of this chapter, to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs." *42 U.S.C. §1437*.

Under Chapter 27-1 "Statement of Policy", the Montgomery County legislature noted that the prohibitions/goals in the County's law are substantially similar to the prohibitions/goals under federal and state law. Consequently, the prohibitions and goals under Section 8 at the federal level are the same for the County's enforcement of its civil rights law at the local level.

Since one of the primary purposes of Section 8 is to provide affordable housing, allowing landlords to discriminate against prospective tenants based on their status as a source of income voucher holder would frustrate this purpose. Consequently, the County, along with many other jurisdictions with source of income provisions in their laws, protects voucher holders from this type of discrimination. Similarly, Section 8's purposes of increasing affordable housing would be thwarted if a landlord were prohibited from increasing the potential stock of affordable housing by reducing the cost of that housing for specific non-discriminatory classes of tenants. *See Salute v Stratford Greens Garden Apartments*, 136 F.3rd 293, 302-303 (2nd Cir. 1998)(discussing prohibition against source of income as implied in goals of Section 8). Accordingly, Chapter 27 does not prohibit landlords from offering rent discount programs, applied equally within a tenant class.

Occupation Is Not A Protected Category Under County Law

Chapter 27-1 lists specific categories upon which discrimination is prohibited. These categories are: race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, genetic status, presence of children, family responsibilities, source of income, sexual orientation, and gender identity. *M.C.C. § 27-1(a)*. Employment/occupation is not included in this list of characteristics upon which the County enforces its anti-discrimination laws. *M.C.C. § 27-5(a)(9)*.

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Because occupation is excluded from these protected classes, offering housing discounts based on occupation does not violate Chapter 27. *E.g., Sisemore v. Master Financial, Inc.*, 60 Cal. Rptr. 3rd 719 (2007) (recognizing a claim for occupational-status discrimination in addition to pending claim for source of income discrimination claim).

Similarly, offering rent discounts to a specific class of employees, based on employer, for example all members of the military, rather than occupation is equally permissible under Chapter 27. *E.g., Long v. Valentino*, 265 Cal. Rptr. 96, 103-104 (1989) (holding that occupational status protection extended to categories of employees from a single employer, such as "police officers," "restaurant owners," or "transportation company" in addition to employee's specific job.)