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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff

DATE: June 26, 2023

RE: **REPORT ON SENIOR RENT PROTECTIONS**

Council Member Gabriela Santiago-Romero requested that the Legislative Policy Division (LPD) draft a report answering various questions related to rent protections for seniors.

1) Are there any rent protections laws in place for seniors?

There are various laws that provide rent protections for seniors. Anti-discrimination laws prohibit landlords from discriminating against individuals based on their age. The federal Fair Housing Act does not explicitly prohibit housing discrimination based on age. However, Michigan's Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq* (ELCRA) includes age as a protected class and prohibits age discrimination in housing.

ELCRA provides the following with regard to housing discrimination:

(1) A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of religion, race, color, national origin, **age**, sex, familial status, or marital status of a person or a person residing with that person:

(a) Refuse to engage in a real estate transaction with a person.

- (b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.
- (c) Refuse to receive from a person or transmit to a person a bona fide offer to engage in a real estate transaction.
- (d) Refuse to negotiate for a real estate transaction with a person.
- (e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or knowingly fail to bring a property listing to a person's attention, or refuse to permit a person to inspect real property, or otherwise make unavailable or deny real property to a person.
- (f) Make, print, circulate, post, mail, or otherwise cause to be made or published a statement, advertisement, notice, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction.
- (g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.
- (h) Discriminate against a person in the brokering or appraising of real property

This language is also codified in Section 23-6-1 of the Detroit City Code. Therefore, landlords in Michigan are not only prohibited from refusing to rent to seniors, but they are also prohibited from treating senior citizens in a discriminatory manner compared to other tenants with regard to the terms and conditions of the lease.

While it is somewhat beyond the scope of this report, many seniors also have disabilities which provides additional protections under anti-discrimination statutes. Housing discrimination against individuals with disabilities is prohibited by the federal Fair Housing Act in addition to Michigan's Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq* (PDCRA). The PDCRA provides nearly identical language regarding discrimination protections for persons with disabilities that ELCRA provides based on age.

The Michigan Legislature has also introduced House Bills 4062 and 4063, which would prohibit housing discrimination against individuals based on their source of income. This would likely provide additional protections to many seniors who may be on fixed incomes and/or rely on social security and other government benefits. The Detroit City Code currently provides for similar protections under Section 23-6-1.

2) Are there any municipalities that have passed laws that protect seniors?

In Birmingham, the City Commission has recently been discussing enacting an ordinance that would provide tenants who are 65 and older with the right to renew their leases unless the landlord has good cause not to renew the lease. While the proposed ordinance is specifically targeted at seniors, it is meant to provide the same “right to renew” protections that Ann Arbor enacted for all tenants and that the Detroit City Council is currently exploring. Aside from the proposed Birmingham ordinance, it does not appear that cities in Michigan have passed laws that specifically provide protections for senior renters.

3) Residents have stated that developers promised that their current rent would not increase. Is there a way to guarantee these promises?

It depends on the nature of the promise. Typically, landlords may not raise a tenant’s rent during the term of a lease unless there is language in the lease that allows them to do so. Once a lease expires, landlords are essentially permitted to raise the rent as they see fit. Under MCL 123.411, local units of government are prohibited from enacting rent control ordinances to limit rent increases.

However, landlords must provide reasonable notice of a rent increase to tenants prior to the expiration of the lease. Typically, landlords should provide a tenant with notice of a rent increase at least 30 days prior to the expiration of a lease.

Under MCL 600.5720, landlords are also prohibited from raising rent in a discriminatory or retaliatory manner. Landlords may not raise rent to force out a tenant because the tenant is a member of a protected class under discrimination laws, nor can landlords raise rent to retaliate against a tenant for asserting rights under the lease or under local, state, or federal laws.

It is unlikely that a promise from a landlord to not increase rent is legally binding unless the tenant provides some type of consideration in return. For example, if the tenant agreed to renew their lease early in return for the landlord agreeing not to raise rent, there would be consideration for the agreement. Without such consideration, there is nothing preventing a landlord from changing their mind about the promise to not raise rent at a later date.

4) Is there a way to regulate application fees for seniors to account for their modified income and to ensure they are not predatory? If not, what are ways we can limit application fees?

Michigan does not currently limit the amount that landlords may charge for application fees. However, local governments are not preempted from regulating rental application fees. For example, Grand Rapids enacted an ordinance¹ that regulates rental application fees in a number of ways, including:

- the landlord is required to provide the criteria on which the rental application will be judged;
- the application fee must be disclosed on any advertising related to the rental property and it cannot be increased;
- the application fee cannot exceed the actual cost of processing the application; and
- the landlord must provide an itemized explanation of how the application fee is used.

If Detroit were to adopt a similar ordinance, it appears that it would protect seniors from predatory application fees because landlords could not charge more for an application fee than it actually costs

¹ https://issuu.com/clayp/docs/rental_housing_application_ordinance

to process the application. Also, as mentioned above, seniors are currently protected from discriminatory application fees under ELCRA and the Detroit City Code.