

City of Whitewater Memorandum

To: City of Whitewater Planning and Architecture Review Commission and Staff

From: Attorney Jonathan K. McDonell

Date: 8/30/2024

Re: In re: Limiting Housing Developments from Accepting Section 8 and Section 42 Vouchers Under Wisconsin Law

I. Introduction

This memorandum analyzes the legal implications of restricting a housing development from accepting Section 8 and Section 42 vouchers under Wisconsin state law. Specifically, it argues that such restrictions violate anti-discrimination statutes and contradict public policy aimed at promoting equitable access to affordable housing.

II. Background

Section 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) provides rental housing assistance to low-income families through a voucher program, enabling tenants to rent from private landlords. Section 42 of the Internal Revenue Code (26 U.S.C. § 42) pertains to the Low-Income Housing Tax Credit (LIHTC) program, which incentivizes the development of affordable housing for low-income tenants.

III. Legal Framework

A. Wisconsin Fair Housing Law (Wis. Stat. § 106.50)

Upon further investigation into the legality of restricting the use of Section 8 and Section 42 programs, Wisconsin law prohibits discrimination in housing based on "lawful source of income" under Wis. Stat. § 106.50(1m)(h). This statute makes it unlawful for housing providers to refuse to rent or otherwise make housing unavailable to someone based on how they lawfully acquire their income, which includes both Section 8 and Section 42 housing assistance.

B. Municipal Authority and Anti-Discrimination Protections

While municipalities in Wisconsin have the authority to enact zoning laws and regulate land use under Wis. Stat. § 62.23, they must do so in compliance with state and federal anti-discrimination laws. Local governments cannot use zoning ordinances or other regulatory tools to circumvent anti-discrimination protections afforded by Wisconsin's Fair Housing Law.

Statutory Interpretation: The Wisconsin Fair Housing Law explicitly prohibits discrimination based on lawful source of income, which includes government housing assistance such as Section 8 vouchers. Disallowing a housing development from accepting Section 8 and Section 42 vouchers constitutes discrimination based on a tenant's income source, which is a protected class under Wisconsin law.

Case Law Support: Wisconsin courts have consistently interpreted Wis. Stat. § 106.50 broadly to include protections for individuals receiving government assistance. In *Metropolitan Milwaukee Fair Housing Council v. Labor & Industry Review Commission*, 173 Wis. 2d 199, 496 N.W.2d 159 (Ct. App. 1992), the court emphasized the importance of protecting access to housing for individuals relying on lawful income sources, including public assistance. Limiting the acceptance of Section 8 vouchers would similarly violate these protections.

IV. Conclusion

Restricting a housing development from accepting Section 8 and Section 42 vouchers violates Wisconsin's Fair Housing Law, particularly its provisions against discrimination based on lawful sources of income. Such restrictions also run counter to the state's public policy objectives of expanding affordable housing access. Therefore, any policy or regulation that seeks to limit Section 8 or Section 42 vouchers in housing developments must be viewed as unlawful and discriminatory under Wisconsin law.