STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CIVIL RIGHTS BUREAU

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Dear Colleagues,

The New York State Office of the Attorney General (OAG) writes to remind New York State counties, localities, and housing providers of their obligation to refrain from discriminating or creating unlawful housing barriers for New Yorkers on the basis of their lawful source of income, including government housing subsidies or housing programs. The OAG is concerned that New York State counties are issuing Emergency or Executive Orders (EOs) that are attempting to limit the ability of renters with CityFHEPS vouchers or other housing subsidies from moving within New York State.[1] Continued reliance on these types of EOs could expose counties to significant legal liability. In addition, they may subject its landlords, real estate brokers, and salespersons to litigation and enforcement actions, as EOs do not waive housing providers' obligations under federal and state law, including the New York State Human Rights Law (NYSHRL).

The OAG works to ensure that New Yorkers have a right to seek housing within New York State free from discrimination. Any local law that requires housing providers to treat voucher-holding renters worse than non-voucher holding renters, or to subject them to more demanding standards, is unlawful and discriminatory. Local laws cannot prevent New York renters with vouchers from moving or otherwise transferring their subsidy to another county.

First, EOs or other local laws that require or encourage housing providers to treat voucher holders differently than local residents are preempted by the NYSHRL. It is illegal for housing providers statewide to discriminate based on lawful source of income.[2] This prohibits preferring a local Department of Social Services (DSS) voucher over a CityFHEPS voucher or requiring a landlord to obtain permission prior to accepting a renter with a CityFHEPS voucher or other housing subsidy when permission is not required otherwise.

[1] Statewide CityFHEPS Frequently Asked Questions for Landlords and Property Owners, NYC Department of Social Services (Sept. 27, 2023), https://www.nyc.gov/assets/hra/downloads/pdf/cityfheps-documents/dss-8z-e.pdf.
[2] Exec. Law § 296(5) (private housing); Exec. Law § 296(2-a) (publicly assisted housing).

Second, EOs that prevent or discourage voucher holders from relocating to a county of their choice interfere with the fundamental right to travel under the U.S. Constitution. The U.S. Supreme Court has found laws that overly burden low-income people may violate the right to travel.[3] The U.S. Court of Appeals for the Second Circuit has established an analogous right to intrastate travel.[4] This right to intrastate travel protects voucher-holders against laws which limit their ability to move within New York state.

Third, EOs that stop or discourage people with CityFHEPS vouchers from moving to another county within New York violate the Fair Housing Act (FHA), 42 U.S.C. § 3604, and other state laws that prohibit discrimination based on protected characteristics such as race, color, national origin, and disability. Policies that predictably cause or will cause a discriminatory effect on members of a protected class violate civil rights law unless they are necessary to achieve a substantial, legitimate, and nondiscriminatory justification.[5] The Coalition for the Homeless reported that approximately 88 percent of the heads of households in New York City Department of Homeless Services (DHS) shelters were Black or Hispanic/Latine.[6] In addition, 65% of single families and 75% of adult families in DHS shelters were living with a disability.[7] Because the majority of people who obtain CityFHEPS vouchers are shelter residents, laws that prevent voucher holders from moving to a county within New York have a disproportionate impact on Black and Hispanic/Latine New Yorkers, as well as New Yorkers with disabilities. Moreover, there is no substantial, legitimate, non-discriminatory justification for these EOs. Of the localities that have adopted these EOs, they have failed to consider less discriminatory alternatives to address housing shortages and instead adopted policies that target people based on lawful sources of income.[8]

Local laws or orders that prevent New Yorkers from moving within the state are unlawful and harm the county, its residents, and its housing providers. The OAG therefore calls on localities that have adopted the type of EOs described above to rescind them and urges any locality considering a discriminatory EO to refrain from adopting it. If any locality has any questions or concerns about its rights or legal obligations, or if any impacted housing provider has questions about their rights and obligations, please do not hesitate to reach out to us at the New York State Office of the Attorney General, Civil Rights Bureau at 1-800-771-7755 or by email at civil.rights@ag.ny.gov.

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[3] *See Shapiro v. Thompson*, 394 U.S. 618, 630 (1969); *Saenz v. Roe*, 526 U.S. 489, 498 (1999).
[4] *See King v. New Rochelle Municipal Housing Authority*, 442 F.2d 646, 648 (2d Cir. 1971) (overturning a five-year durational residency for admission to public housing because it violated the right to intrastate travel).
[5] *See Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.,* 135 S. Ct. 2507, 2515 (2015); *see also* 24 C.F.R. § 100.500.
[6] *State of the Homeless 2023*, Coalition for the Homeless (June 2023), https://www.coalitionforthehomeless.org/wp-content/uploads/2023/06/StateoftheHomeless2023.pdf.
[7] *Id.*
[8] 24 C.F.R. § 100.500(c)(2)-(3).

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You may learn more about the New York State Human Rights Law and source of income protections by visiting our website at: http://ag.ny.gov/publications/source-income-discrimination. You can report discrimination based on source of income by contacting the New York State Office of the Attorney General Civil Rights Bureau at https://ag.ny.gov/file-complaint/civil-rights or by calling 1-800-771-7755. You can also report discrimination by contacting the New York State Division of Human Rights at http://www.dhr.ny.gov or by calling 1-844-862-8703.