



FAIR CHANCE ORDINANCES

AN ADVOCATE'S TOOLKIT

Acknowledgements

The National Housing Law Project (NHLP) is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide.

NHLP is committed to supporting policy solutions that expand housing opportunities for people who have come in contact with the criminal justice system. Working at the intersection of housing and reentry is critical to our mission of advancing racial and social justice.

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1.0 Introduction

What Is a Fair Chance Ordinance?

A fair chance ordinance is a law adopted by a local jurisdiction (usually a city or county) that creates rules that limit the use of criminal records by landlords when they are screening prospective tenants. The purpose of a fair chance ordinance is to reduce barriers that people who have had contact with the criminal justice system frequently face when they are looking for housing. Fair chance ordinances generally include rules limiting what types of criminal history landlords can

consider and procedures that landlords have to follow when screening prospective tenants, as well as rules about how these requirements will be enforced. In recent years, several communities around the country have passed fair chance ordinances aimed at expanding access to housing.¹ While these ordinances share certain features, they also vary in many ways, reflecting the particular political and practical choices made in each community.

Fair chance ordinances vary in many ways.

- *Scope: Some ordinances cover all types of rental housing while others only cover publicly-subsidized affordable housing.*
- *Screening restrictions: The fair chance ordinance in Richmond, California, does not allow affordable housing providers to consider criminal records unless they relate to a felony conviction that is less than two years old.² An older ordinance in Newark, New Jersey, permits landlords to consider any serious offense conviction for eight years after a person is released from custody.³ Seattle, Washington, bars most landlords from considering any criminal records except official sex offender registries.⁴ Many ordinances require landlords to consider the context of a person's criminal history before making a final decision.*
- *Screening procedures: Some ordinances require landlords to determine whether an applicant is otherwise qualified for a unit before doing any criminal history screening, but others allow landlords to screen for all criteria at the same time.*
- *Enforcement: Most existing fair chance ordinances include administrative complaint procedures. Richmond also allows people to enforce its ordinance by going to court.*

1. A chart summarizing the existing fair chance ordinances as of December 2019 is included in the Appendix.

2. Richmond Municipal Code §§ 7.110 *et seq.*

3. Newark Ordinance 14-0921 (2015) (not codified).

4. Seattle Municipal Code §§ 14.09.005 *et seq.*

Who Is This Toolkit For?

This toolkit is for organizers and advocates who are engaged in fair chance advocacy on a local level who are looking for guidance on the nuts and bolts of developing a fair chance policy. It draws heavily on our experience supporting local fair chance campaigns, particularly in northern California, and on input from advocates who have worked on fair chance campaigns in other states. We have been privileged to work with dedicated organizers and other groups focused on criminal justice reform and reentry, including many people directly impacted by the criminal justice system. All of our work is informed by organizations engaged in the hard work of advocating on behalf of formerly incarcerated people and their families.

This manual provides a framework for advocates and organizers to use as they develop fair chance policies. While we focus on local fair chance ordinances, the materials presented here can also be used to analyze related policies such as the admissions

criteria for a particular building or a planning document that sets out policies for a public housing authority's entire portfolio (some of these planning processes are discussed in more detail in [Section 6.0](#) below).

To draft a successful fair chance policy, advocates must be involved in the broader fair chance campaign and partner with organizations in the community that are deeply engaged in issues related to criminal justice reform, especially those that include individuals and families who are directly impacted by mass incarceration. This toolkit touches on fair chance organizing as it relates to crafting a policy, but it does not provide guidance on the organizing and community engagement aspects of a fair chance campaign. For that, we urge you to seek out local partners with grassroots organizing experience.



2.0 Why Fair Chance?

The Scope of the Problem

The United States prison population grew by 500 percent over the last 40 years.⁵ Over 600,000 people leave prison each year.⁶ In 2014, 1 in 52 adults in the United States was on probation or parole.⁷ One in three adults in the U.S. has a criminal record. Estimates of the number of people likely to be excluded from housing due to an arrest or criminal record are staggering.⁸

Due to a long history of intentionally racist policies, especially the “war on drugs,” people of color and ethnic minorities represent over 56 percent of the prison population.⁹ Law enforcement’s focus on urban areas, poor communities, and communities of color have led to significant racial disparities in arrests and incarceration. The federal Bureau of Justice Statistics reports that as of the end of 2017, out of all state and federal inmates with a sentence of more than one year, approximately 33 percent were African American, 23 percent were Latino, and 30 percent were white.¹⁰ In the same year, African Americans accounted for 13.4 percent of the total population, Latinos for 18.3 percent, and non-Hispanic or Latino Whites for 60.4 percent.¹¹

Low-income people are also overrepresented among those arrested or incarcerated. One 2015 study found that incarcerated people ages 27-42 had a median income prior to entering jail or prison that was 41 percent less than the median income of non-incarcerated people of a similar age.¹² People experiencing homelessness are 11 times more likely to face incarceration when compared to the general population.¹³

Women are the fastest growing segment of the prison population. Between 1980 and 2014, the number of women imprisoned increased by an astounding 700 percent.¹⁴ This increase coincided with the rapid increase in the number of inmates imprisoned for drug offenses, which rose from 40,900 in 1980 to 469,545 in 2015.¹⁵ In 2015, an estimated 48 percent of federal inmates and 15.7 percent of state inmates were serving sentences for drug offenses. That same year, 25 percent of all women in prison were incarcerated for drug related offenses.¹⁶

5. The Sentencing Project, *Fact sheet: Trends in U.S. Corrections* (June 2017), available at: <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>

6. U.S. Department of Justice, Bureau of Justice Statistics, *Total Sentenced Prisoners Released From State or Federal Jurisdiction Admissions and Releases of Sentences Prisoners Under the Jurisdiction of State or Federal Correctional Authorities* (2015), available at: <https://www.bjs.gov/content/pub/pdf/p15.pdf>

7. U.S. Department of Justice, Bureau of Statistics, *Probation and Parole in the United States* (2014), available at: <https://www.bjs.gov/content/pub/pdf/ppus14.pdf>

8. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoner Series 1980 to 2015*, available at: <https://www.bjs.gov/index.cfm?ty=pbse&sid=40>

9. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2017*, available at: <https://www.bjs.gov/content/pub/pdf/p17.pdf>

10. *Id.*

11. U.S. Census Bureau, *Quick Facts, Population Estimates*, (2018) available at: <https://www.census.gov/quickfacts/fact/table/US/PST045218>

12. Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned* (Prison Policy Initiative, June 2015) available at: <https://www.prisonpolicy.org/reports/income.html>

13. National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* (2016) 19, available at: <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>

14. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoner Series 1980 to 2015*, available at: <https://www.bjs.gov/index.cfm?ty=pbse&sid=40>

15. The Sentencing Project, *Fact sheet: Trends in U.S. Corrections* (June 2017), available at: <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>

16. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2015*, available at: <https://www.bjs.gov/content/pub/pdf/p15.pdf>

Lack of Affordable Housing

People released from incarceration face a monumental challenge when trying to find affordable housing. They are competing for housing with over 37 million Americans who live at or below the federal poverty level.¹⁷ Very low-income households (those making 50 percent of area median income or less) already face extremely long odds, with only 62 affordable rental units available for every 100 households.¹⁸ The situation is even worse for extremely low-income households (those making 30 percent of area median income or less) for whom there are only 37.7 affordable rental units available for every 100 households.¹⁹ In 2015 alone, 8.3 million tenants had what HUD termed “worst case needs,” meaning that in addition to having very low incomes and lacking housing assistance, they also had severe rent burdens and/or severely inadequate housing.²⁰

Stable, affordable housing is an urgent need for people leaving prison and is an essential factor in reducing recidivism.²¹ Being homeless makes formerly incarcerated people more likely to be arrested and incarcerated again due to policies that criminalize homelessness such as making it illegal to sleep in public or panhandle.²² Homelessness has other negative impacts as well, such as reducing access to health care, social services, educational opportunities and jobs.²³

What a Fair Chance Ordinance Can Do

Access to affordable housing is limited by overly strict admissions policies, many of which specifically target and reduce options for people with criminal records. About 90 percent of landlords screen tenants for any criminal history²⁴ and many applicants to affordable housing are subject to unreasonable screening standards. For example, public housing authorities (housing

authorities) are required to implement “reasonable” lookback periods in their admissions criteria, yet many housing authorities have admissions policies that either lack any lookback periods at all or allow for consideration of criminal history from an unreasonably long time ago.²⁵ In addition, many housing providers screen for criminal activity that has little to no bearing on an individual’s likelihood of success as a tenant.

One way to ensure that applicants with criminal records have meaningful opportunities to secure housing is to pass local ordinances that limit the information landlords can consider when making admissions decisions. For example, an ordinance could prohibit the use of outdated records or non-conviction records. Because such ordinances seek to eliminate the use of outdated or irrelevant criminal history information, they are generally called “fair chance” ordinances.

What a Fair Chance Ordinance Cannot Do

While fair chance policies *expand access* to housing, they do little to *create* new housing for people with criminal records. Fair chance policies alone cannot affect the supply of affordable housing. In order to have a broad impact on people reentering the community post-incarceration, more resources are needed to build new housing, particularly permanent supportive housing that provides the services that people need when they exit jails or prisons. It is also important to recognize that fair chance policies intend to solve a problem that appears at the back end of an individual’s involvement in the criminal justice system. Addressing root causes will require support for campaigns that seek to end mass incarceration, police brutality, unfair sentencing laws, and other racist policies.

17. U.S. Census Bureau, *Income and Poverty in the United States 2015*, available at: <https://www.census.gov/library/publications/2016/demo/p60-256.html>

18. HUD-Worst Case Housing Needs 2017: A Report to Congress, available at: <https://www.huduser.gov/portal/sites/default/files/pdf/Worst-Case-Housing-Needs.pdf>

19. *Id.*

20. *Id.*

21. Urban Institute, *Examining Housing as a Pathway to a Successful Reentry*, available at: <http://www.urban.org/sites/default/files/publication/24206/412957-Examining-Housing-as-a-Pathway-to-Successful-Reentry-A-Demonstration-Design-Process.PDF>; Faith E. Lutze, Jeffrey W. Rosky, Zachary K. Hamilton, *Homelessness and Reentry-A Multisite Outcome Evaluation of Washington State’s Reentry Housing Program for High Risk Offenders* (2013) available at: <http://journals.sagepub.com/doi/abs/10.1177/0093854813510164>

22. Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People* (Prison Policy Initiative, Aug. 2018), available at: <https://www.prisonpolicy.org/reports/housing.html>

23. *Id.*

24. Collatz, Andrea, “Landlord Survey: Optimism In Renting Your Property,” TransUnion Smartmove blog (June 6, 2017).

25. Tran-Leung, Marie Claire, *When Discretion Means Denial: The Use of Criminal Records to Deny Low-Income People Access to Federally Subsidized Housing in Illinois* 12 (2011) available at: <https://www.nhlp.org/wp-content/uploads/Tran-Leung-When-Discretion-Means-Denial.pdf>

3.0 Getting Started

Key issues you will need to address at the outset of developing a fair chance ordinance include:

- Determining whether existing federal or state laws might affect the validity or scope of your planned ordinance;
- Deciding how to frame and communicate about the planned ordinance; and
- Taking an inventory of the rental housing stock in your community.

These issues are discussed in more detail below. Keep in mind that as your ordinance evolves, you may need to revisit some or all of them.

Interaction with Other Laws

When developing an ordinance, you have to be aware of the legal context in which it will function. There may be laws in place at the federal or state level that opponents of a fair chance ordinance may try to use to invalidate or undermine it. There may also be other existing or potential local laws or policies that will interact with a fair chance law and that need to be taken into account to avoid conflicts or uncertainty.

Federal law preemption

Federal law might directly conflict with a particular component of your planned ordinance. For example, certain federal statutes and regulations require public housing agencies (housing

authorities) and owners of some federally assisted housing²⁶ to reject applicants in two specified categories: those with convictions for methamphetamine production on a federally-assisted property and people who appear on a lifetime sex offense registry.²⁷ As a result, any fair chance ordinance that does not permit screening for these categories must include an exception that allows housing authorities and owners to comply with these federally mandated exclusions.

Under federal law, housing authorities and owners in many federally assisted housing programs also have discretion over whether to accept applicants who have engaged in other types of criminal activity beyond the two exclusion categories, within some limits. If a housing authority or owner has a policy of denying applicants based on other types of criminal history, the policy must be in writing and available to applicants. It is important to determine what criminal history policies are in place in federally assisted programs in your jurisdiction so you can make an informed decision about how your fair chance ordinance will affect those policies. At least one housing authority in a jurisdiction with a broad fair chance ordinance has taken the position that it does not have to comply based on federal law. While this position has not been accepted by any court, it is important to be aware of the possibility that your ordinance might be challenged if you restrict criminal history screening by housing authorities and owners who claim to have conflicting obligations or discretion under federal law.

26. Affected programs include public housing, the Section 8 voucher program, project-based Section 8, Section 202, Section 811, Section 221(d)(3), Section 236, Section 514 and Section 515. Owners of certain Rural Development (RD) housing and of properties financed with low-income housing tax credits (LIHTC) are not required to bar any applicant due to criminal history. For more details about which mandated criminal history exclusions exist in the various federal housing programs, see [An Affordable Home on Reentry](https://www.nhlp.org/wp-content/uploads/2018/08/Rentry-Manual-2018-FINALne.pdf), Ch. 2, (NHLP 2018) [hereinafter *Reentry*] available at: <https://www.nhlp.org/wp-content/uploads/2018/08/Rentry-Manual-2018-FINALne.pdf>

27. There is an additional mandatory three-year waiting period if a member of the household was previously evicted from federally assisted housing for drug-related criminal activity, but there are some exceptions available, such as in the case of rehabilitation or changed circumstances. For more details about this issue, see *Reentry* at 2.2.3.

What is federally-assisted housing?

Federally-assisted housing is affordable housing that is subsidized by the federal government. There are different types of federally-assisted housing, and each program's rules vary with respect to tenant screening.

HUD administers a number of federally-assisted housing programs including:

- Public housing, which is owned and administered by a local Public Housing Authority (housing authority).*
- Housing Choice Vouchers (also known as Section 8 vouchers) which are tenant-based subsidies administered by a local housing authority.*
- HUD "Multifamily" programs that may house specific populations such as people with disabilities or seniors.*

- HUD administers a number of other programs that make housing affordable to low-income families. For more information see NHP's HUD Housing Programs: Tenants Rights.*

The Internal Revenue Service (IRS) administers The Low Income Housing Tax Credit (LIHTC) program. LIHTC housing is the largest source of new affordable housing in the country. Tax credits may be used to build or renovate affordable housing. Different rules apply to LIHTC housing than HUD-subsidized housing.

For more information on how to advocate for reasonable screening policies at both HUD and LIHTC affordable housing projects see [Section 6.0](#) below.

State law preemption

Certain state laws cover broad subject areas, such as housing discrimination, in ways that might not leave room for some aspects of your planned fair chance ordinance. For example, the California Fair Employment and Housing Act (FEHA) prohibits housing discrimination based on characteristics such as race, color, sex, national origin, disability and sexual orientation.²⁸ In some cases, opponents of local regulation have claimed (usually unsuccessfully) that FEHA bars local ordinances aimed at preventing other types of housing discrimination.²⁹

In many states, the state constitution or court decisions have established "home rule," meaning that local jurisdictions are free to pass laws with respect to municipal affairs and state laws only take precedence over local laws when they relate to "state affairs" as opposed to "municipal affairs."³⁰ Some states, however, use a different approach, often called "Dillon's rule", which gives state law precedence over local laws except in limited circumstances.³¹ A few states, including Arkansas, Tennessee, Wisconsin and North Carolina, explicitly preempt local anti-discrimination laws and prohibit cities from enacting anti-discrimination laws that are more protective than their state laws.³² In Wisconsin, the state legislature passed such a prohibition targeting longstanding fair chance protections in Dane County and the city of Madison,

28. Cal. Gov't Code § 12921 (West 2019).

29. See, e.g., *Apartment Association of Greater Los Angeles v. City of Santa Monica*, Los Angeles Sup. Ct., Case No. SC124308 (Order Granting Defendants' and Interveners' Motion for Summary Judgment, Feb. 2, 2017). Note that in this California case, the court concluded that a local source of income anti-discrimination ordinance for voucher families is not preempted by the state fair housing law.

30. California is a "home rule" state with respect to its charter cities. Cal. Const. art. XI, § 7.

31. Vermont, for example, is a "Dillon's rule" state. See, e.g., *City of Montpelier v. Barnett*, 2012 VT 32, ¶¶60, 49 A.3d 120, 142 (2012); *E.B. & A.C. Whiting Co. v. City of Burlington*, 175 A. 35, 42 (Vt. 1934).

32. Nicole DuPuis et al., *City Rights in an Era of Preemption: A State-by-State Analysis*, 10-11 (National League of Cities 2017) available at: <https://www.nlc.org/sites/default/files/2017-03/NLC-SML%20Preemption%20Report%202017-pages.pdf>

effectively undoing the work that had been done at the local level years earlier.³³

In order to understand how related state laws might affect a local fair chance ordinance in your jurisdiction, you will need to identify the relevant laws in your state and analyze how your state handles potential conflicts between state and local laws.

Interaction with other local laws

It is also important to be aware of other, related local laws that might affect – or be affected by – how your fair chance ordinance is implemented. Examples of this type of related law are source-of-income ordinances that prohibit discrimination against Section 8 voucher holders, ordinances that regulate tenant screening reports, and “first-in-time” ordinances that require a landlord to offer an available rental unit to the first qualified person who applies.³⁴

Framing and Messaging

As in all political campaigns, framing and messaging are critical and have a direct impact on the political chances of getting a fair chance ordinance passed. Your campaign’s communications strategy will involve decisions and activities that are beyond the scope of this Toolkit, but it is important to integrate that strategy into the development of the ordinance itself.

Aspects of an ordinance that can bolster your communications strategy include:

- The name of the ordinance;
- Where the ordinance is placed in the municipal code; and
- Legislative findings that detail the relevant problems the ordinance is positioned to help address (*e.g.*, racial discrimination in housing, homelessness, barriers to family reunification, recidivism arising from lack of housing).

Taking an Inventory of the Local Rental Housing Stock

Knowing what types of rental housing are available in your community will make it easier to develop a fair chance ordinance that addresses local needs. If, for example, your community’s affordable rental housing options are limited to privately-owned properties subsidized by federal tax credits or available to Section 8 voucher holders, the details of your ordinance might be different than they would be if public housing units were also in the mix. Knowing whether most multifamily rentals are in buildings with only a few units or with more than 8 or 10 units will also help you determine the impact of covering or not covering properties with fewer units in the ordinance.

33. *New Wisconsin landlord laws wipe out hard-fought victories for Madison renters* (Isthmus, November 1, 2013) available at: <https://isthmus.com/news/news/new-wisconsin-landlord-laws-wipe-out-hard-fought-victories-for-madison-renters/>

34. See Section VI(a) below for more details about first-in-time ordinances.



Rental housing stock inventory

You can gather information about your community's rental housing stock using these resources:

- The National Housing Preservation Database, <http://preservationdatabase.org/>, is searchable by location and lists the type(s) of subsidy or other federal assistance for each property. You need to complete a free registration in order to be able to access the database.
- For information about properties subsidized by federal tax credits: www.novoco.com/low_income_housing/resources/maps_data.php.
- For information about subsidies for rural properties, searchable by location: https://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp.
- Local housing authorities should have data about the number of rentals using tenant-based vouchers and the number of public housing units.
- City or county websites may include data or lists about the rental housing available in a community.
- Non-profit affordable housing providers are likely to have information about the range of rental housing options available in a community.



4.0 Key Elements of a Fair Chance Ordinance

As you develop and begin to draft a fair chance ordinance, you will need to make decisions about a number of key issues, including: the type(s) of housing the ordinance will cover; the categories of persons the ordinance will protect; the specific limits the ordinance will place on screening for criminal history; the mechanics of tenant screening under the ordinance; notice and disclosure requirements; and enforcement mechanisms.

Which Housing Providers Will the Ordinance Cover?

When deciding the scope of coverage, the basic considerations will be about which types of housing providers and which types of housing to include.

Some cities have chosen to cover only affordable housing providers in their fair chance ordinances. In California, the City of Richmond's ordinance covers all affordable housing, including units rented to Section 8 voucher holders. San Francisco's ordinance is narrower, covering only affordable housing funded by the City or that is part of the City's inclusionary affordable housing program.

When deciding the scope of coverage, the basic considerations will be about which types of housing providers and which types of housing to include.

Deciding which type of housing an ordinance will cover

Advocates in Richmond, CA, led by the Safe Return Project, decided to move forward with an ordinance that covered only affordable rental housing in their city. This decision was the result of strategic political decision-making and compromise. Some specific factors they considered were:

- Where people were living upon reentry (most people could only afford affordable housing).*
- The rental housing landscape (most of the affordable housing in Richmond is federally-assisted housing or financed by low income housing tax credits (LIHTC)).*
- The political feasibility of an ordinance that covered private housing (knowing that the landlord and realtor lobby would come out in full force to oppose the ordinance if it was expanded to private housing).*

For more on the development of Safe Return's policy and the organizers' participatory research and organizing model see Home with a Purpose: A History of the Safe Return Project.³⁵

35. The Haas Institute for a Fair and Inclusive Society at the University of California, Berkeley, *Home with a Purpose: A History of the Safe Return Project*, available at: http://haasinstitute.berkeley.edu/sites/default/files/safereturncasestudy_publish.pdf

Other jurisdictions have chosen to restrict consideration of criminal history by all providers of rental housing, including private landlords. The fair chance ordinances in Seattle, Portland (OR), Detroit, Minneapolis, Washington, D.C., and Urbana, Champaign and Cook County (IL) cover all types of housing.³⁶

If a fair chance ordinance is going to differentiate between affordable housing providers and private landlords, it is important to define “affordable housing provider” very carefully and with reference to the specific characteristics of the rental housing stock in your jurisdiction. For example, in Richmond, the fair chance ordinance defines affordable housing providers in terms of receipt of public funding, including grants, tax credits and other subsidies.³⁷ In San Francisco, which has an inclusionary affordable housing program and a density bonus program that imposes affordability restrictions on certain units in new, privately owned developments, the ordinance also includes those below-market-rate units as a separate category in the definition since those units are not necessarily covered by a narrower definition that only includes publicly funded housing.

With regard to tenant-based Housing Choice Vouchers (more commonly known as Section 8 vouchers), there are additional considerations to address because voucher families generally go through two rounds of tenant screening. First, the housing authority screens the applicant for voucher eligibility. That screening must include the two categorical bans discussed earlier (people who appear on a lifetime sex offense registry and people convicted of production of methamphetamine on federally-assisted property) and may also include a broader criminal background check. Second, the voucher family will usually be screened by a private landlord.³⁸ It is important to explicitly state whether a fair chance ordinance applies to housing authorities when they screen for voucher eligibility, to private landlords who rent to voucher families (“voucher landlords”) or to both.

If voucher landlords are going to be covered, you will also have to consider how to define a “voucher landlord” for purposes of the local law. Voucher landlords could be included in

the definition of “affordable housing provider,” but that may leave out landlords who are not currently accepting vouchers but may accept them in the future. This issue is especially complicated in jurisdictions that also prohibit discrimination against Section 8 voucher holders (sometimes called “source-of-income discrimination”), because all private landlords in such jurisdictions are potential Section 8 landlords. Another thing to keep in mind when deciding who will be covered is that including voucher landlords in a fair chance ordinance that covers only affordable housing providers could make some landlords less willing to rent to voucher holders.³⁹

If you want your ordinance to cover public housing authorities or other agencies that determine people's eligibility for Section 8 vouchers and other forms of tenant-based rental assistance, you will need to include language that covers those entities and their voucher screening activities. For example, you could include in the definition of a covered adverse action “treating a person as ineligible for a tenant-based rental assistance program, including, but not limited to, the Section 8 tenant-based voucher program (42 U.S.C. section 1437f).”

Due to political and community concerns, jurisdictions with fair chance ordinances that cover all housing providers often include some limited exceptions. For example, a number of fair chance ordinances do not require landlords who own and occupy the housing to comply. Washington D.C. exempts housing providers who own and occupy housing with three or fewer rental units.⁴⁰ Champaign and Urbana exclude all owner-occupied units in which the landlord will be sharing a kitchen or bathroom with an unrelated tenant.⁴¹ Seattle's ordinance includes exceptions for owner-occupied single-family homes and for accessory dwelling units (*i.e.*, “in-law units”) if the landlord lives on the premises.⁴² In some cases, these exemptions mirror exceptions provided to private landlords in state or federal fair housing laws. In Cook County, fair chance proponents opted not to include such an exception, in part because the Human Rights Ordinance they were amending did not include one, and they did not want to narrow the scope of that broader ordinance.

36. Seattle Municipal Code § 14.09.025(A)(1); Portland City Code § 30.01.86; Chapter 26, Article V, §§ 26-5-1 – 26-5-20 of the 1984 Detroit City Code; Minneapolis Ordinance No. 2019-038, amending Title 12, Chapter 24 of the Minneapolis Municipal Code of Housing; Code of the District of Columbia §§ 42-3541.01(5), 42-3501.03(14); Urbana Code of Ordinances §§ 12-37, 12-64; Champaign Municipal Code §§ 17-3(11), 17-4.5, 17-71, 17-75; Cook County Code of Ordinances §§ 42-38(b)(8), (c)(5).

37. Richmond Municipal Code § 7.110.040(b).

38. In some jurisdictions, however, private landlords may rely on the housing authority's screening process.

39. This will be less of a concern if your jurisdiction also prohibits discrimination against voucher holders.

40. Code of the District of Columbia § 42-3541.03(1).

41. Champaign Municipal Code § 17-75(b); Urbana Code of Ordinances § 12-64(d)(2).

42. Seattle Municipal Code § 14.09.115(C)-(D).

Whether to include all housing providers or only some subset in your ordinance is of course a strategic decision based on local context. Some factors to consider are:

- Where do formerly incarcerated people and people with criminal records in your city live? Where do they want to live?
- What types of affordable and market-rate rental housing are available in your jurisdiction?
- How many people would be protected if only affordable housing or another subset of rental housing is covered?
- What other laws or regulations are applicable to tenant screening in your jurisdiction? For example, are some or all housing providers prohibited from discriminating against Section 8 voucher holders?
- What are the political costs and benefits of covering more types of housing?
- Who are your political allies and opponents, and how will the scope of coverage affect their support for or opposition to a fair chance ordinance?
- How does the scope of coverage intersect with other policy priorities that you and your allies have?
- Broader ordinances that cover more types of housing providers may have a higher chance of being challenged in court.

Will there be an opportunity to broaden the ordinance in the near future (for example, is the strategy to pass an ordinance that applies only to certain types of housing providers and then, building on that success, later amend it to cover more housing providers)?

Who Will Be Protected by the Ordinance?

All fair chance ordinances currently in effect protect people who are applying to begin a tenancy. As noted above, some only cover applicants to affordable housing, while others cover applicants to all (or most) types of housing.

You may also want to consider whether to explicitly cover current tenants with regard to previous criminal history from before they began the tenancy. The concern here is that a housing provider, such as a federally-assisted landlord, might conduct a criminal history screening as part of a periodic recertification⁴³ during the course of a tenancy and then attempt to evict the tenant on the basis of a previous offense. The Richmond ordinance addresses this issue by including “to fail or *refuse to continue* to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or to reduce any tenant subsidy” in the definition of “Adverse Action.”⁴⁴ Another option would be to address this issue in the definition of an “Applicant.”

Prospective applicants should also be considered – *i.e.*, people who inquire about or come to look at a rental unit but have not yet formally submitted an application. In order to make sure prospective applicants are also protected, you may want to add language to the ordinance that defines “applicant” to include this group. Washington D.C.’s ordinance includes any person “*who intends to request to be considered for tenancy* within a housing accommodation” in its definition of “Applicant.”⁴⁵

Some communities have also decided that their ordinances should specifically name for protection people who are seeking to join an existing tenant household. For example, the Richmond ordinance explicitly calls out “individuals applying to be added to a lease”⁴⁶ to emphasize the fact that family reunification is a key goal and a critical support for people who are exiting jails and prisons.

What Type of Criminal History Will the Ordinance Prohibit Housing Providers From Considering?

Perhaps the most important element of a fair chance ordinance is the scope of information that a landlord is prohibited from considering. When deciding the exact limits you want to place on criminal history screening, there are a few different approaches you can take. You may opt to ban all criminal history screening, except as required by federal law.⁴⁷ Alternatively, you could allow screening only for convictions that occurred during a specified lookback period and/or only for certain types of offenses.

43. Many federally-assisted landlords are required to conduct periodic recertifications of tenants’ income and/or eligibility. *See, e.g.*, 24 C.F.R. § 960.257 (public housing) and § 982.516 (vouchers).

44. Richmond Municipal Code § 7.110.040(a) (emphasis added).

45. Code of the District of Columbia § 42-3541.01(1) (emphasis added).

46. Richmond Municipal Code § 7.110.050(b).

47. For more information about federally mandated exclusions in federally assisted programs and properties, see [Section 3.0](#) above.

Limiting how far back criminal record screening can go

If you include a lookback period, you will need to specify the length of the lookback period. Lookback periods in existing ordinances range from two years (Richmond, California) to eight years (Newark, New Jersey) to ten years for certain serious offenses (Minneapolis, Minnesota). It is also very important to be careful about how the lookback period will be measured. If your ordinance includes a two-year lookback period, will that two



The start date of a lookback period matters a lot!

Kendra was convicted of a criminal offense that took place in August 2007 and was sentenced in January 2008. Her sentence included a prison term, fines and restitution. She was released from incarceration in September 2015 and was then on parole until September 2018. She cannot afford to pay the remaining fines and restitution imposed as part of her sentence, and it is unclear if she will ever be able to complete that part of her sentence.

In a jurisdiction with a five-year lookback period counted from the date of sentencing, Kendra will have the right to be considered for rental housing without reference to her conviction as soon as she is released since her sentencing occurred over seven years before her release. If the five-year lookback is counted from the date of release, however, she will have to wait until September 2020 before she can benefit from the fair chance protections. If the lookback period is counted from when she completed parole, she will have to wait until September 2023. And if the five years only starts once she completes all terms of her sentence, she may never benefit at all.

years be counted from the date of the conduct that resulted in the conviction, the date the person was sentenced, the date the person was released from incarceration, or the date the person completed the sentence, which could include completion of any parole or probation and/or payment of any fines or restitution? Using the date of the underlying conduct will result in the earliest access to housing for people reentering, while using the date of conviction or sentencing or the date of release or of completion of all terms of a sentence will delay access.

All lookback periods are based on the concept that at some point, applicants with aging criminal records should be eligible for housing because the risk that they will re-offend declines over time. HUD's 2016 fair housing guidance on the use of criminal records in housing cites one research study that showed that after a period of time, there is little to no difference in risk of future offending between those with an old criminal record and those without any criminal record.⁴⁸ Although the timeframes may differ, the research all supports the proposition that an offender's risk of re-offending declines over time to the point that it is the same as the risk that someone in the general population will commit a crime.⁴⁹ For this reason, some housing providers have opted to adopt, shorten and/or customize lookback periods.⁵⁰

Deciding whether or not to apply a lookback period, and how long any lookback period will be is not a simple matter. These decisions have often been made arbitrarily by policy makers with little or no input from local organizers and advocates, but it is crucial for organizers and advocates to work through for themselves whether any lookback period is justified and, if so, what length of lookback would be fair and reasonable and would meet local needs.

48. Dep't Hous. & Urban Dev., *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* 7 n. 34 (2016) (citing Megan C. Kurlycheck et al., *Scarlet Letters and Recidivism: Does an Old Record Predict Future Offending?*, 5 *Criminology & Pub. Pol'y* 483 (2006)).

49. Peter Leasure & Tia Stevens Andersen, *Recognizing Redemption: Old Criminal Records and Employment Outcomes*, 41 *N.Y.U. Rev. of L. & Change: The Harbinger* 276-78 (2017) (providing a literature review of relevant criminological research).

50. See, e.g., Housing Authority of New Orleans (HANO) Criminal Background Screening Procedures (adopted March 2016) available at: http://www.hano.org/home/agency_plans/2016%20CRIMINAL%20BACKGROUND%20PROCEDURES%20-%20FINAL.pdf. HANO got rid of all blanket bans except those that are federally mandated, established lookback periods tailored to the type of offense and required an individualized assessment before any denial. For information about other innovative policies, see <https://www.vera.org/projects/opening-doors-to-public-housing>

Defining “criminal history”

Landlords screen for a wide range of criminal history. It is therefore necessary to consider not only how convictions are handled, but also other types of interactions with the criminal justice system, such as:

- *Arrests;*
- *Convictions that have been sealed, vacated, expunged or otherwise invalidated by later judicial or legislative action;*
- *Cases from the juvenile justice system;*
- *Incidents that occurred while a person was a juvenile (even if later tried as an adult); and*
- *Participation in or completion of a diversion or a deferral of judgment program.*

Note that definitions for various dispositions vary by state so it is important to be as specific as possible about the information you are referencing. You may want to include the specific part of the penal code that applies in the ordinance.

Limiting the type of criminal history that landlords can consider

Ordinances that permit screening for certain types of convictions (with or without a lookback period) usually include a list of specific offenses or set out broad categories of offenses. For example, Washington DC’s ordinance permits screening for a lengthy list of criminal offenses that includes, among other things, arson, murder, sexual abuse and various drug offenses, with a seven-year lookback period.⁵¹ Champaign’s ordinance permits screening for convictions involving the use of force or violence or the illegal use, possession, distribution, sale or manufacture of drugs, with a five-year lookback period.⁵² In contrast, Seattle’s ordinance only permits limited sex offender registry screening.⁵³

Some fair chance ordinances restrict blanket bans for particular offenses or categories of offenses by prohibiting denials except when an applicant’s prior felony conviction is “directly related” to an individual’s tenancy. The fair chance ordinance in Cook County, Illinois, for example, allows landlords to rely on a past conviction only

if a denial based on the specific conviction “is necessary to protect against a demonstrable risk to personal safety and/or property of others affected by the transaction.”⁵⁴ Richmond’s ordinance defines a “directly-related conviction” which is a conviction where the underlying conduct “has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing,” **and** that either makes the person ineligible for public housing under state or federal law, is for a crime carried out in the applicant’s home, or is for a sex crime.⁵⁵ Presumably, a conviction during the applicable lookback period for arson at a prior residence or for assault of a neighbor could meet such a test, but a DUI/DWI or prostitution conviction would not.

Studies that examine the impact of different types of criminal history on housing outcomes can provide critical information to organizers and advocates and can also be useful as part of the fair chance campaign. One study published in 2019 found, among other things, that 11 out of 15 offense categories studied – including marijuana possession, serious traffic offenses and prostitution – had no significant effect on housing outcomes.⁵⁶

51. Code of the District of Columbia § 42-3541.02(d).

52. Champaign Municipal Code § 17-75(e). Note that a majority of city council members voted in June 2019 to shorten the lookback period from five years to two years.

53. Seattle Municipal Code § 14.09.020 (exempting sex offender registry information from the screening prohibition).

54. Cook County Code of Ordinances § 42-38(c)(5)(c).

55. Richmond Municipal Code § 7.110.040(h).

56. Cael Warren, *Success in Housing: How Much Does Criminal Background Matter?* 19 (Wilder Research 2019). The study also found that negative effects of criminal history on housing outcomes are significantly reduced in households with two or more adults and/or one or more children. *Id.* at 15.

What Procedures Will Landlords Have to Follow?

In order to make a fair chance ordinance effective, you will need to consider what rules to put in place regarding the landlord's process of screening for criminal history. These rules should address how and where landlords obtain criminal history information, when in the screening process they can consider that information, and what steps they have to take if they intend to deny an application based on criminal history.

Some fair chance ordinances try to get at the various ways landlords gather criminal history information by including a definition of "inquiry" that covers oral and written inquiries, questions on application forms and in interviews, and background check reports obtained from third parties.⁵⁷ Seattle's ordinance, which permits landlords to screen for an applicant's status on a sex offender registry, limits the inquiry to information obtained directly from a county, statewide or national sex offender registry and not from a secondhand report by a third party⁵⁸ since information in such reports is frequently inaccurate.⁵⁹

Another safeguard to consider is requiring landlords who do screen for criminal history (as permitted by the ordinance) to first determine whether an applicant is "otherwise qualified" – *i.e.*, screen first for all criteria other than criminal history – before asking about or reviewing any criminal history information. That way, a landlord will not be able to use another reason, such as credit or income, as a pretext, and it will be clear that any denial after someone is determined to be "otherwise qualified" is based on the criminal history information. Some ordinances, like the ones in Richmond, California, and Washington D.C., that include an "otherwise qualified" requirement also require landlords to make conditional offers to applicants before doing any criminal history screening.⁶⁰

To the extent that your ordinance will permit some criminal history screening beyond the narrow federal mandates previously discussed, you will still want to ensure that landlords do not just impose blanket bans on people with certain types of convictions

What are mitigating circumstances?

Richmond's fair chance ordinance includes a non-exclusive list of "Evidence Of Rehabilitation or Other Mitigating Factors" that includes: "a person's satisfactory compliance with terms and conditions of parole and/or probation following the Conviction; employer recommendations; educational attainment or vocational or professional training since the Conviction; completion or active participation in rehabilitative treatment; [] letters of recommendation from community organizations, counselors or case managers, teachers, community leaders or parole/probation officers who have observed the Applicant since his or her conviction; and the age of person at the time of the conviction."⁶¹

Additional mitigating circumstances that could be included in a fair chance ordinance include:

- documentation showing that the applicant's criminal conduct was related to a disability
- documentation showing that the applicant's criminal conduct was related to the applicant's status as a victim of domestic violence or another crime
- the effect the denial of admission would have on the rest of the applicant's family
- the effect the denial of admission would have on the community⁶²
- evidence of the family's participation in or willingness to participate in social service or counseling programs
- For a further discussion of mitigating circumstances, rehabilitation and requests for reasonable accommodation, see Chapter 4 of [An Affordable Home on Reentry](#).

57. See, e.g., Richmond Municipal Code § 7.110.050(k).

58. Seattle Municipal Code § 14.09.010 (definition of "Registry Information").

59. See, e.g., <https://www.consumer.ftc.gov/blog/2018/10/will-background-check-errors-deny-you-home>. Errors in tenant screening reports can arise from mismatches (*i.e.*, reporting information about another person with the same or similar name as the applicant) or misleading information (*e.g.*, failure to provide information about a subsequent reversal of a conviction).

60. Richmond Municipal Code § 7.110.050(c)(2); Code of the District of Columbia § 42-3541.02(b)(1).

61. Richmond Municipal Code § 7.110.040(i).

62. Note that this factor opens the door to the argument that providing housing to an individual with a criminal record substantially increases the potential that the individual will not be a repeat offender and therefore may be a benefit to the community.

without considering the specific facts of the offense and of the applicant's current situation. As discussed in HUD's 2016 guidance on the use of criminal records in tenant screening, blanket bans on housing for people with criminal records or for certain types of offenses will almost always violate federal law because they have a disparate impact on people of color that cannot be justified as necessary to achieve a substantial, legitimate objective.⁶³ The HUD guidance therefore disapproves most categorical bans in favor of policies that use individualized assessment – rather than stereotypes and biases – to determine whether an applicant is likely to perform well as a tenant.⁶⁴

Most of the existing fair chance ordinances require landlords to conduct some type of individualized assessment before turning down an applicant with a criminal record.⁶⁵ Some of the important factors to be considered in such an assessment (also known as “mitigating circumstances”) include:

- The nature and severity of the crime.
- How long ago the underlying conviction occurred.
- The degree of participation by the applicant in the criminal conduct.
- Whether the criminal conduct occurred on property rented by the applicant.
- Whether the criminal conduct has a direct and specific negative bearing on the safety of persons or property at the housing in question.
- The age of the applicant at the time of the criminal conduct.
- Evidence of positive performance as a tenant before and/or after the criminal conduct.
- Household composition (*i.e.*, how many adults and children).
- Supplemental information regarding the applicant's rehabilitation.

What Type of Notices Will the Ordinance Require?

Notice requirements serve many purposes, including informing applicants and tenants of the rights and protections available under a fair chance ordinance, encouraging applicants to complain about unfair denials, deterring landlords from using improper criminal history screening, and creating a record that can be used in the future if there is a dispute about whether a landlord complied with the law. Notice requirements should be designed to meet your specific objectives. Below, we include a few examples of notices and their purposes, but there may be other types of notices that make sense for your ordinance.

For all notices, you may decide to be explicit in the ordinance about what information is required by law. Another approach is to leave the details to an enforcement or oversight body, and have that agency draft the notices as part of the implementation plan. The Washington, D.C., Urbana, Champaign and Newark ordinances direct city staff to prepare model notices that must be used by all property owners.

When making the decision whether to include requirements about the content of the notice in the ordinance itself, there are several factors to consider. First, will leaving the content unaddressed in the ordinance result in inconsistent notices from various housing providers? The result may be confusing for applicants. Second, will you have a chance to review the content of any model notices if drafting is delegated to city staff? Advocates and organizers often have the strongest understanding of the types of information applicants need to know and understand before they apply for housing. If you choose to allow the city or another entity to draft the notice, you should make sure that you and your partners have a key role in the drafting process.

63. Dep't Hous. & Urban Dev., *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* 2 (2016). For a more detailed discussion of the HUD Guidance and fair housing principles as applied to criminal records screening see also, *Reentry* at 2.3.4.

64. Dep't Hous. & Urban Dev., *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* 7 (2016).

65. *E.g.*, Seattle Municipal Code § 14.09.025(A)(3).

Informational Notices

An informational notice informs prospective applicants of their fair chance rights. There are two important considerations regarding informational notices: the content of the notice and how it is posted or distributed by housing providers. The basic elements of an informational notice are:

- A brief description of the fair chance law;
- A clear list of the criminal history that can't be considered;
- If relevant, definitions and examples of "rehabilitation," mitigating circumstances" or other factors housing providers must consider and how and when the applicant can provide this information; and
- How applicants can appeal a decision or report a violation of the law.

A fair chance ordinance might also require that informational notices include a copy of the landlord's tenant screening criteria. Landlords are generally not required to make screening criteria publicly available (except for some HUD housing providers). Requiring landlords to provide their screening criteria in writing can be useful both to inform prospective tenants of the criteria up front and help applicants determine whether a denial was proper. On the other hand, written screening criteria can also cause people to screen themselves out of applying, so it is important to balance those concerns.

How housing providers post and/or distribute informational notices to prospective tenants is also important. You should consider where applicants are most likely to see a notice during the housing search process, such as a realtor or landlord's website or rental office, in common areas of the property, or as an attachment to the application itself. For example, San Francisco's ordinance requires that all advertisements for vacancies include an informational notice that criminal history will only be considered in compliance with the city's fair chance ordinance.⁶⁶ Seattle's ordinance requires that an informational notice be included as part of all rental applications.⁶⁷

Notice of Adverse Action

A fair chance ordinance can also address what notice applicants receive in the case of an adverse action. How and when the

applicant is informed of an adverse decision will affect whether the applicant has the time and the information needed to properly evaluate and appeal the decision.

In laying out the required elements of an adverse action notice, consider including all of the information the applicant will need to evaluate whether the housing provider's actions violated the fair chance ordinance or other law. The language in the notice will vary depending on what screening criteria the ordinance allows for, but consider requiring the following information:

- The specific criminal history that was the basis of the decision;
- An explanation of the relationship between the criminal history considered and the risk of foreseeable harm to other tenants and/or the property;
- How and what mitigating factors and rehabilitation were considered;
- How to appeal the housing provider's denial;
- The procedures and contact information for reporting a violation of the ordinance, including any deadlines or statutes of limitation.

The Richmond, Seattle, Washington D.C. and Newark ordinances all require that adverse action notices contain the information that formed the basis for a denial.⁶⁸ For example, Richmond requires the following information:

- The type of housing sought;
- Why the criminal history that was considered has a specific negative bearing on the landlord's ability to fulfill his or her duty to protect the public and other tenants from foreseeable harm;
- What bearing, if any, the time that has elapsed since the applicant's or household member's last offense has on the housing provider's decision;
- The evidence of rehabilitation and mitigating circumstances considered, and
- How to report a violation of the ordinance.⁶⁹

66. San Francisco Police Code § 4907(a).

67. Seattle Municipal Code § 14.09.020.

68. Richmond Municipal Code § 7.110.050(f); Seattle Municipal Code § 14.09.025; District of Columbia Code § 3(f)(1); Newark Ordinance 14-0921, Sec. V.

69. Richmond Municipal Code § 7.110.050(f).

Generally, requiring detailed information about the denial will make it easier for an applicant to determine whether the fair chance ordinance was violated. However, you don't want the requirements to be so administratively burdensome that they deter property owners from complying or local government from enacting and enforcing the law.

You should also consider addressing when and how the landlord must notify an applicant of an adverse action. The timing should take into account the deadline for filing an appeal and whether landlords will be required to keep units open during any complaint or appeal procedure. The method of notice should be consistent with the standard notification practices in your community (*e.g.*, email, regular mail). For more information on appeals, see [Subsection 4.0\(f\)](#) below.

Copies of criminal background check reports

You should consider requiring housing providers to provide a copy of the background report used as the basis for the housing decision to all applicants. Access to the report is important for several reasons. First, it allows the applicant to assess whether an adverse action violated the ordinance. Second, it helps the applicant determine whether any mitigating circumstances or evidence of rehabilitation will be useful for an appeal. Third, it gives the applicant an opportunity to dispute inaccurate information in the report with both the housing provider and the supplier of the report. Fourth, it eliminates the (often significant) delay associated with requesting and obtaining a copy of the criminal report from a tenant screening company, thus improving the likelihood of a successful appeal that enables the applicant to obtain the housing in question.

Your ordinance could also specify when the report must be provided to the applicant. Ideally, an applicant should be given access to the report in time to provide mitigating information or evidence of rehabilitation and dispute inaccurate information before an adverse decision is made. For example, San Francisco's ordinance requires housing providers to give applicants all reports they relied on before making a final decision.⁷⁰

70. San Francisco Police Code § 4906(g).



Do consumer protection laws require the landlord to provide a copy of your screening report?

Many landlords obtain and utilize criminal background reports from private consumer reporting agencies when screening applicants. These private companies and the landlords that use the reports are subject to the federal Fair Credit Reporting Act (FCRA)⁷¹ as well as most state consumer protection laws.⁷² The FCRA includes a number of rights and protections that are especially germane to applicants denied rental housing, including the right to obtain disclosures of whatever information a consumer reporting agency has on file about an applicant at the time of the request.⁷³ The disclosure must be made for free if requested within 60 days of an adverse action, such as denial of admission to housing. The FCRA also requires that the housing provider provide the name, address and telephone number of the agency that provided the report and notify the consumer that she may obtain a free copy of the report (from the screening or consumer reporting agency) within 60 days after the denial.

While these protections are important, applicants requesting disclosure of reports under the FCRA generally do not receive copies of the same reports that housing providers rely on to deny applications. Additionally, under the FCRA, an applicant has to submit a disclosure request that includes personal identification information that is satisfactory to the screening company. As a result, FCRA responses are often unreasonably delayed. Unreasonable delays occur in a number of common circumstances such as when errors in the report cause the screening company to question the identity of the consumer, the consumer has an unstable address history or lacks a verifiable address, or if the consumer has a disability that makes obtaining records particularly challenging. You should therefore consider including explicit disclosure obligations in your fair chance ordinance in order to make sure that applicants know their rights and have timely access to the actual information used to deny them housing.

71. 15 U.S.C.A. § 1681 *et seq.* (West 2019).

72. For example, Washington's consumer protection act imposes stricter guidelines than FCRA as to the timeliness of the dispute process and requires credit reporting agencies to (1) contact the source of disputed information within five days, (2) give the consumer notice that a dispute has been closed within five days, and (3) provide a consumer with the results of an investigation within five days. Rev. Code. Wash. § 19.182

73. 15 U.S.C.A. § 1681m (a)(3)& (a)(4) (West 2019).



Notice Accessibility

Advocates and organizers should ensure that notices are accessible to all prospective tenants, including people with disabilities, people with limited English proficiency (LEP individuals), and people with limited literacy skills.

The Fair Housing Act requires most housing providers to grant reasonable accommodations to people with disabilities.⁷⁴ A reasonable accommodation is a change in a rule, policy, or practice that affords an individual with a disability the right to use and enjoy housing. The right to a reasonable accommodation extends to the application process.⁷⁵ Although required under fair housing laws independent of the fair chance ordinance, you should consider including language in the ordinance about housing providers' obligation to provide reasonable accommodations to applicants with respect to the notice requirements.

Federally-assisted housing providers, managers and landlords are also subject to obligations under Section 504 of the Rehabilitation Act of 1973 (Section 504).⁷⁶ Federally-assisted landlords must ensure effective communication with applicants with disabilities, which may include the use of auxiliary aids and devices or interpreters. Consider including explicit language about compliance with Section 504 if the ordinance will cover federally-assisted housing providers, particularly with respect to communicating information in relevant notices.

It is also important to consider how notices will be communicated to non-English speakers. Both the San Francisco and Richmond ordinances contain provisions requiring translation of notices for LEP individuals. Richmond's ordinance requires the city to translate the adverse action notice into any language spoken by more than 5 percent of the city's population.⁷⁷

Federally-assisted housing providers are subject to additional requirements with respect to serving LEP individuals. Federally-

assisted owners and landlords must create plans to address how to serve people who are LEP⁷⁸ and do an analysis to assess the LEP needs in the area they are serving.⁷⁹ They are required to create a language access plan and to provide language access in accordance with that plan.⁸⁰ Adverse action notices related to a fair chance ordinance should be part of any such language access plan.

Finally, consider requiring that notices be written in easy-to-understand and accessible language for people with limited literacy skills.

How Will the Ordinance Be Enforced?

There are several issues to consider when deciding how your fair chance ordinance will be enforced. You will need to select enforcement mechanisms and remedies. You will need to determine who will be responsible for enforcement. You should also consider including additional measures to ensure compliance, such as publicity, outreach and education for landlords and prospective tenants, housing testing to assess compliance, and data collection.

There are two primary mechanisms for enforcing a fair chance ordinance. The first is an administrative complaint process managed by the local government. The second is a private right of action that allows individuals to sue landlords in court over violations of the ordinance. While most existing fair chance ordinances include one or the other of these options, they are not mutually exclusive. In Richmond, for example, organizers elected to include an administrative complaint process and a private right of action.⁸¹

Here are some factors to consider when deciding how your ordinance will be enforced:

74. 42 U.S.C.A. § 3604(f) (West 2019).

75. 42 U.S.C.A. § 3604(f)(1) (West 2019); *See also* Joint Statement of the Dept. of Hous. and Urban Dev. And the Dept. of Justice, Reasonable Accommodation Under the Fair Housing Act at 2 (2002).

76. 29 U.S.C.A. § 794 (West 2019).

77. Richmond Municipal Code § 7.110.060(c).

78. 42 U.S.C.A. § 2000d (West 2019); Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

79. Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 Fed. Reg. 2,732 (Jan. 22, 2007).

80. *Id.*

81. Richmond Municipal Code § 7.110.070.

- Does the local government have the resources to provide staff time and other support to enforce the ordinance administratively and/or in court?
- Is there another administrative enforcement process already in place that could be used to enforce the ordinance?
- How many complaints and hearings do you anticipate will be brought each year?
- Does your jurisdiction already have other laws in place – such as consumer protection or landlord-tenant laws – that could be used to sue someone who violates the fair chance ordinance?
- What resources are available in the community to assist applicants with bringing cases in court?⁸²
- Does the local legal aid organization have capacity to represent tenants in administrative enforcement actions and/or in court?

Depending on available resources in your community, you may also want to explore alternative or additional methods of enforcement involving conciliation or restorative justice models.⁸³

Administrative Complaint Process

All of the existing fair chance ordinances utilize some form of an administrative complaint process in which municipal staff review, investigate, and make a determination, often after an administrative hearing. Key elements to consider when designing an administrative complaint process include: (1) important deadlines; (2) how the hearing process will be conducted; (3) to what extent investigative materials will be subject to public disclosure; and (4) what remedies will be available through the administrative process. On one hand, an administrative process usually allows for faster and less expensive resolution than litigation in court. It also gives prospective tenants the ability to enforce the ordinance without necessarily having to find an attorney to represent them. On the other hand, depending on other state and local laws, the remedies available administratively will generally be much more limited than those available from a court.

Deadlines

If you decide to include an administrative complaint process in your ordinance, one of the first considerations will be timing. You will need to set a deadline for submitting complaints and also decide how long the process will take from complaint to resolution.

There are several competing interests to consider when determining these time frames. On the one hand, both parties will usually have an interest in having disputes resolved quickly. This is a particularly important consideration if the ordinance will require the landlord to hold the unit open pending resolution of the complaint, as discussed below. On the other hand, a slower process may be necessary to allow for an adequate investigation both before and after a complaint is submitted. For example, applicants need ample time to gather evidence of rehabilitation. If there is only a short window of time to submit a complaint, wrongfully denied applicants may be discouraged from utilizing the process.

Jurisdictions with existing ordinances have adopted varying deadlines for complaints. San Francisco's deadline is 60 days, and Urbana's is 90 days.⁸⁴ In contrast, both Seattle and Washington, D.C. give complainants up to a year to submit a complaint.⁸⁵

Many fair chance ordinances that provide for administrative complaints include review and hearing procedures that can take a year or more to complete, particularly when they utilize existing administrative complaint procedures that the local government already has in place. For example, Seattle's fair chance ordinance utilizes the City's existing employment discrimination administrative complaint process, which includes several levels of investigations and review, and then a final determination.⁸⁶ In deciding whether to use an existing complaint process, you will need to understand the rules and timeline of the existing process and decide whether the advantages of not having to create a new set of procedures outweigh any delay or other disadvantages that might result from using a system set up for other purposes. Another element to consider is whether the existing process is appropriate for complaints related to your ordinance. For example, will a hearing officer who decides complaints related to employment discrimination be given

82. Note that if you do include a private right of action with an attorney fees provision, it is more likely that attorneys will be willing to take fair chance cases.

83. For more information about these alternative models, see, e.g., <https://irjrd.org/home/restorative-practices/>.

84. San Francisco Police Code § 4911; Urbana Code of Ordinances § 12-81(d).

85. Seattle Municipal Code § 14.09.050; District of Columbia Code § 5(a).

86. Seattle Municipal Code §§ 14.09.35 – 14.09.105.

authority to decide a case about a fair chance violation? Will training be available so that people used to reviewing other

types of complaints understand applicants' rights under the new ordinance?

Richmond's dual-option administrative complaint deadline

It is possible to create an administrative process that provides both an option for an expedited resolution and a longer time frame for submitting complaints. Richmond's ordinance gives applicants access to an expedited hearing process if they file a complaint within 14 days of receiving notice that they have been denied. The landlord must hold the unit open during that 14-day period and then, if a complaint is filed, until the process is complete. The City must hold an administrative hearing and issue a decision within 30 days of the filing of the complaint. Hearing officers have the authority to order a housing provider to rent to an applicant and to levy monetary penalties.⁸⁷

Complaints can also be filed after the initial 14-day deadline for up to six months after the denial. These complaints are subject to a non-expedited administrative review process. The landlord is not required to hold the unit open while the complaint is under review, but hearing officers can still levy monetary penalties if they determine there has been a violation of the ordinance. Other interested parties, including city staff, also have access to this process if they witness or receive evidence of violations.

Hearing Process

Given what is at stake for both the tenant and the landlord in a hearing on a fair chance complaint, it is important that your ordinance provide for fair and just procedures, often referred to in the law as "due process." Generally, due process requires hearing procedures that include:

- A timely notice detailing the reasons for the action;
- An opportunity to present evidence and arguments and to confront any adverse witnesses;
- The option to be represented by an advocate, if desired;
- An impartial decision maker;
- A decision resting on the applicable legal rules and the evidence presented; and
- A statement of reasons for the decision and of the evidence relied on.⁸⁸

There are several additional features you should consider including to ensure an accessible and fair process:

- Procedures to ensure equal access to the process for people with disabilities and people with limited English proficiency;
- Translation services;
- Procedures allowing the parties to review each other's evidence; and
- A requirement that the hearing be recorded (at no cost to the applicant) and that the parties have prompt access to that recording.

Administrative Remedies

Remedies are the relief or penalties imposed by the administrative complaint process after a violation is found. Some examples of fair chance ordinance remedies include monetary penalties for

87. A copy of Richmond's implementing regulations is included in the Appendix.

88. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

violating the ordinance or affirmative relief such as ordering the housing provider to rent to a wrongfully denied applicant. When considering the remedies for your ordinance, keep in mind what your primary goals are so you can align the remedies with those goals. Some factors to consider are:

Will the ordinance provide a remedy to a wrongfully denied applicant or only provide for a fine paid to the local government?

- What type of relief would be most useful to an applicant? Access to the unit in question? Access to the landlord's next available comparable unit? Money?
- What types of remedies will promote compliance and deter other landlords from violating the ordinance?
- Are the remedies you are considering consistent with applicable state and local laws?

All of the existing fair chance ordinances impose some type of monetary penalties on housing providers who violate the ordinance. However, the amount of the penalties varies significantly from jurisdiction to jurisdiction. For example, Richmond's ordinance imposes no penalty for the first violation of the ordinance.⁸⁹ In contrast, Seattle's ordinance penalizes housing providers \$11,000 for the first violation.⁹⁰

An important consideration in setting a schedule of penalties is whether it will promote compliance. If the penalty is too low, it may not provide enough of a deterrent. However, if it is too high, it may be an unfair penalty to a landlord with fewer resources or it could be vulnerable to a legal challenge. Washington D.C. has addressed this issue by imposing penalties based on the size of the housing provider's rental inventory.⁹¹ The maximum penalty is \$1,000 for housing providers with 10 or fewer units, \$2,500 for 11 to 20 units, and \$5,000 for 21 or more units.⁹²

Another consideration is whether penalties will increase progressively if a provider violates the ordinance more than once. The rationale with this type of system is that higher penalties are appropriate when it is more likely the provider knowingly violated the ordinance. For example, Seattle's ordinance has a penalty

of \$11,000 for the first violation, \$27,500 for a second violation within five years of the first violation, and \$55,000 for a third violation within seven years of the first violation.⁹³

A couple of cities have also chosen to authorize relief that orders a housing provider to rent the unit in question to the wrongfully denied applicant. It is important to note that in order to ensure that this remedy is available, the ordinance must also require that the landlord hold the unit open until the complaint process has been resolved. Otherwise, the landlord will rent the unit to someone else, especially in competitive rental markets. Richmond, for example, requires housing providers to hold the unit open for 14 days after giving the applicant notice that they intend to deny the application for the unit.⁹⁴ If the applicant submits a complaint to the city during the 14-day period, the housing provider must keep the unit open until the administrative process has been resolved.

Another option is to authorize relief that orders a housing provider to rent the next available comparable unit in their inventory to the wrongfully denied applicant. This type of remedy could be subject to legal challenge, however, and is unlikely to address the immediate housing needs of a wrongfully denied applicant, particularly in a rental market with low vacancies and low turnover.

Private Right of Action

Of the existing fair chance ordinances, only one (Richmond) allows applicants for rental housing to sue landlords over violations of the ordinance.⁹⁵ However, enforcement through the courts can be the most powerful enforcement tool available to people harmed by violations of a fair chance ordinance, so you should seriously consider including a private right of action in addition to any administrative enforcement system. A lawsuit can allow for relief that is generally not available as part of an administrative complaint process, such as significant monetary damages payable to the wronged applicant and injunctive relief requiring the landlord to take certain actions. On the other hand, litigation can take a long time, and, unless there are legal

89. City of Richmond Rules of Procedure For Considering Arrests and Convictions in Affordable Housing Decisions § IX(A).

90. Seattle Municipal Code § 14.09.100.

91. District of Columbia Code § 6(a).

92. *Id.*

93. Seattle Municipal Code § 14.09.100.

94. City of Richmond Rules of Procedure For Considering Arrests and Convictions in Affordable Housing Decisions § V(H).

95. City of Richmond Rules of Procedure For Considering Arrests and Convictions in Affordable Housing Decisions § V(I).

resources available in the community to represent prospective tenants, a private right of action may not be as helpful as intended. It is important, therefore, to identify legal resources, such as legal aid or other tenant advocates, and, if feasible given budgetary constraints, to build in funding for legal representation of wronged applicants as part of your ordinance. At a minimum, any private right of action should include a provision allowing a prospective tenant who wins to collect attorney fees and costs from the defendant housing provider.

If you decide to allow for your ordinance to be enforced in court, there are a number of factors to consider. First, will the ordinance require applicants to go through an administrative process before filing a lawsuit in court? This type of requirement is often referred to as an exhaustion of administrative remedies. Property owners generally argue that requiring the parties to complete an administrative process will encourage them to resolve their differences in a less costly and quicker way than litigation. On the other hand, requiring a prospective tenant to go through an administrative procedure before suing in court will generally delay relief and deny people their rights just because they miss the short deadline to engage in the administrative process.

You will also have to decide who is authorized to sue in court under the ordinance. You may want to limit access to the court process to wrongfully denied applicants. However, you should also consider allowing other interested parties, such as community groups or municipal staff to enforce the ordinance

in court. Allowing additional parties to enforce the ordinance can promote more proactive enforcement, for example, the ordinance could authorize criminal justice agencies to bring lawsuits against landlords who post advertisements in violation of the ordinance.

Your ordinance should also authorize specific remedies for the court to award. Remedies can include monetary penalties, damages that compensate a party for losses due to violations of the ordinance and/or injunctive relief. Giving the court the ability to order injunctive relief allows the court to force a housing provider to comply with the ordinance, which may be the most important result of challenging a violation for the prospective tenant. As noted above, the ordinance should also direct the court to award attorney fees and costs to the prospective tenant if a violation is established.⁹⁶ Without an attorney fees clause, people who file a legal complaint will be on the hook for any fees and costs associated with filing the case.

Finally, as with an administrative complaint process, you will need to determine how long after the relevant events (*e.g.*, wrongful denial based on criminal history or posting of non-compliant ads) a lawsuit can be brought. Richmond's ordinance does not have a set deadline (also called a "statute of limitations"), so rules that apply to similar types of legal claims will apply there. Since general statutes of limitation can be fairly short, though, it is usually better to include an explicit deadline so the parties know where they stand and can avoid costly and time-consuming disputes over what deadline applies.

96. Ideally, the attorney fees provision will only allow for an award of fees and costs to a prevailing plaintiff, as in fair housing and consumer protection laws.



Additional Enforcement Measures

There are other proactive ways to ensure compliance with a fair chance ordinance. Publicity, outreach and education, and requirements aimed at assessing the jurisdiction-wide impacts of an ordinance, such as testing and data collection, are all important enforcement mechanisms.⁹⁷

Publicity about the ordinance can help ensure that applicants are informed of their rights when they apply for rental housing. Local governments, including public health departments for example, can play an important role in publicizing fair chance policies. Cities can post notices of their own, include FAQ's and other informational materials online, disseminate information through service providers in the community, and place ads on public transportation and in other public areas. They can also conduct or sponsor outreach and educational workshops for prospective tenants and for housing providers. These activities should be ongoing and not just limited to the period immediately after an ordinance is enacted.

On-the-ground testing is another way to ensure that housing providers are aware of and complying with your ordinance. Housing testing involves sending testers out to apply for housing and seeing what questions a housing provider asks regarding criminal history and whether an applicant with, for example, a felony conviction that pre-dates the ordinance's lookback period, is denied. Testing often involves sending out a pair of testers with matched characteristics except for the issue being tested (such as criminal history) and tracking differences in how they are treated. You can team up with a local fair housing testing organization that typically engages in fair housing testing and other anti-discrimination work.⁹⁸

It is also important for the local government to collect data about the number of complaints submitted and/or lawsuits filed, the outcomes of those complaints and lawsuits, and any testing results. The data should be compiled and reported to the council or legislative body at regular intervals. This type of data may be useful as evidence in administrative or court proceedings, if, for example, it shows that a landlord has a pattern of violating the ordinance.

Data Collection

Data collection can act as a key enforcement tool because it provides meaningful information to decision-makers and people in power. Data such as trends in screening criteria, denials, and the number and types of complaints filed by applicants, may provide insight into the housing barriers faced by people impacted in your community and could show the need for enhanced enforcement.

First, consider a requirement that housing providers submit a copy of their admissions criteria and the number and characteristics of housing application denials to the local enforcement body. In addition, the city should track and make public all complaints made under the fair chance ordinance (without disclosing confidential or private information). A fair chance law could direct the city to compile a monthly or annual report on the data it receives and/or distribute the report to a municipal governing board such as a City Council or Board of Supervisors. Both the Richmond⁹⁹ and San Francisco¹⁰⁰ ordinances include data capture requirements.

97. Center on Budget and Policy Priorities, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results* (2018) available at: <https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results>. This report about Section 8 anti-discrimination ordinances, which are similar in many ways to fair chance ordinances, asked stakeholders to identify the best methods of enforcement. Respondents in many cases cited to alternatives to administrative complaints or lawsuits as the best enforcement mechanisms.

98. For more information on fair housing testing related to racial discrimination and criminal records screening policies in housing see Equal Rights Center, *Unlocking Discrimination* (2016) available at: <https://equalrightscenter.org/wp-content/uploads/unlocking-discrimination-web.pdf>

99. Richmond Municipal Code §§ 7.110.070(e) and (g).

100. San Francisco Police Code §§ 4911(b) and 4912.

5.0 Implementation

It is essential to include an implementation plan in your local fair chance ordinance. Elements could include: designation of a specific department or agency responsible for administering the ordinance; a specific timeline for implementation; directions to the assigned department or agency to promulgate regulations under the ordinance; and a plan for educating community members about the ordinance.

Identifying the Responsible Department and Specific Tasks

When drafting your ordinance -- ideally in collaboration with municipal staff -- you should identify the appropriate department that will be tasked with administration of the ordinance. This will also allow the specified department to think about staffing or other needs ahead of time. Ideally, the ordinance will provide the department with the resources and authority necessary for effective implementation. Otherwise, you may risk delays in implementation until resources are appropriately allocated.

You may also want to include specific tasks that must be completed after the ordinance is enacted. For example, Richmond's ordinance directs the City Manager to identify hearing officers and staffing for the administrative process, develop notices and other documents, conduct outreach to housing providers, identify a funding source, create a budget, and set out a schedule of penalties.¹⁰¹

Timeline

Consider including an implementation timeline in your ordinance. You may want to have a deadline for an initial report to a local governing body as an accountability mechanism. You could also consider giving affected individuals and interested parties

an explicit right to enforce implementation of the ordinance so advocates and organizers will have leverage to resist bureaucratic inaction.

Regulations

Many fair chance ordinances direct a city department or agency to create fair chance regulations. The ordinance could include a provision that gives community groups, legal aid advocates, and other interested parties the right to participate in the drafting process. Some topics that you could address in regulations are:

- The mechanics of complaint submission, including whether there will be an official form, what information must be included in a complaint, and how complaints can be received (*e.g.*, in person, by phone, online).
- How complaints will be processed, including timelines for each step (if not laid out in the ordinance) such as investigations, scheduling of hearings, and hearing decisions.
- When application fees are paid.¹⁰²
- The required contents of the hearing officer's decisions.
- Policies for accommodating people with disabilities and people with limited English proficiency.
- How parties will be informed of developments during the administrative process.
- Referrals to legal assistance.
- Procedures for collection of data and compilation of reports.
- Procedures for testing to ensure compliance.
- Information on penalties and other remedies.

¹⁰¹. Richmond Municipal Code § 7.110.070(c).

¹⁰². See Cook County Just Housing Amendment Interpretive Rules § 730.100. Before accepting an application fee, a housing provider must disclose to the applicant information about their tenant selection criteria and key information related to the fair chance ordinance.

Several jurisdictions have enacted fair chance regulations under their fair ordinances. We have included examples in the Appendix.

Outreach

[Subsection 4.0\(e\)](#) above discusses notice to prospective applicants as an important element of a fair chance policy. You should also consider including a plan for public outreach and education, for both tenants and landlords. How will landlords be informed of their responsibilities under the law? Will landlords be required, for example, to attend a training on the new ordinance? It may also be useful to direct the municipality to draft model materials (required language for rental listings, for example) and make them available online.

An ordinance is only as strong as its implementation!

When Richmond, California, passed their fair chance ordinance in 2016, they had several champions in local government who helped move the policy through the City Council. Directly following the bill's passing, several of those same champions changed jobs or retired. This created implementation challenges because the people in power no longer prioritized the fair chance policy. Fair chance partners in Richmond had to stay at the table and continue to advocate for fair chance so that families in Richmond could benefit from the ordinance's protections. It was not until after immense pressure from local organizers and a lawsuit against a housing provider for clearly violating the ordinance that the City began to fully implement its fair chance policy.



6.0 Related Policies

Other Local Ordinances

Advocates and organizers across the country have thought creatively about ways to increase housing opportunities for people exiting jails and prisons and have come up with a range of policies to address this challenge. Like most fair chance ordinances, these policies are new. There is, therefore, little data available on the outcomes of such initiatives. In the coming years, we hope to know more about what works in different local communities. The following policies aim to achieve some of the same goals as a fair chance ordinance: increasing housing access for people directly impacted by the criminal justice system, reducing prejudice or implicit bias against people with criminal records, and removing barriers to affordable housing.

Seattle’s “first-in-time” ordinance

In 2016, Seattle passed a “first-in-time” ordinance to combat implicit bias in housing application decisions and level the playing field for people with criminal records.¹⁰³ The ordinance requires landlords to consider housing applications on a first-come, first-served basis so that the landlord cannot discriminate arbitrarily or based on characteristics of the applicant that they are not legally permitted to consider. Citing research that shows how implicit bias can undermine a prospective tenant, the City Council voted to approve the first ordinance of its kind.

The first-in-time ordinance requires landlords to keep accurate records of the date and time completed applications are

received. The landlord must then offer the unit to the first qualified applicant. The landlord has no discretion to move onto the next qualified applicant unless the earlier qualified applicant turns down the rental. Other important aspects of the ordinance include: (1) a requirement that residential landlords provide notice of tenant screening criteria to all applicants, and (2) civil penalties for failure to comply with the law, including rent refunds or credits, attorney fees and costs, and other penalties.

In 2017, the Pacific Legal Foundation (PLF), a conservative non-profit organization, sued the City of Seattle on behalf of several landlords, alleging that the first-in-time ordinance was unconstitutional under Washington state law.¹⁰⁴ The trial court agreed with the plaintiff landlords and found that the ordinance violated the takings, due process, and free speech clauses of Washington’s state constitution. However, in November 2019, the Washington Supreme Court reversed that decision and ruled Seattle’s first-in-time ordinance does not violate the state’s constitution.¹⁰⁵

The case is important for several reasons. First, the Seattle ordinance is the first of its kind in the nation, so this decision will likely set a precedent for similar laws.¹⁰⁶ Second, the legal claims in the “First-in-Time” case are similar to those that can be used to challenge other ordinances, particularly local laws that try to achieve the same goals. In fact, opponents of Seattle’s fair chance ordinance (also represented by PLF) presented similar claims in a separate case challenging that ordinance.¹⁰⁷ Third, the decision will influence the willingness of other local

103. Seattle Municipal Code § 14.08.050.

104. *Yim v. City of Seattle (“Yim I”)*, Case No. 17-2-05595-6 SEA (King County Super. Ct.).

105. *Yim v. City of Seattle*, Case No. 95813-1 (Wash., Nov. 14, 2019).

106. Keep in mind, however, that because the case was brought in state court under Washington law, the legal analysis may be unique to that state, leaving room for opponents in other states to challenge such ordinances using similar theories.

107. *Yim v. City of Seattle (“Yim II”)*, Case No. Civil Action No. 2:18-cv-00736-JCC (W.D. Wash.). Unlike *Yim I*, *Yim II* is pending in federal (rather than state) court. However, the federal court requested guidance from the Washington Supreme Court on the state constitutional issues, and the Washington Supreme Court issued a decision in November 2019 that will likely result in a victory for the City of Seattle regarding its fair chance ordinance. See *Certification in Yim v. City of Seattle*, Case No. 96817-9 (Wash., Nov. 14, 2019).

jurisdictions to enact ordinances that limit what a landlord can consider in the tenant screening process.

Portable screening reports and other policies that limit the use of application fees

Some jurisdictions have explored policies that eliminate application fees, which can act as a huge barrier to affordable housing.¹⁰⁸ Application fees can be especially problematic for people with criminal records who are routinely charged such fees even if they do not meet a landlord's threshold eligibility requirements. In addition, application fees disproportionately steer low-income people away from housing opportunities.

Policies that require landlords to use portable screening reports aim to reduce the impact of discriminatory application fees and also put control of the information contained in a screening report back in the hands of the applicant. This is especially important given the prevalence of errors in background reports generated by private screening companies, including inaccurate criminal history information or duplicative entries.¹⁰⁹

A portable screening report ordinance requires landlords to accept a verified and secure third-party-generated tenant screening report provided by tenants applying for rental housing. Prospective tenants can use a reusable screening report as many times as needed within a thirty-day period for a single fee paid to third-party companies that provide the service. Applicants pay the screening company directly to generate the report, and landlords access the report using an online portal. Applicants have the opportunity to view their reports prior to submitting applications, so they have an opportunity to correct errors and also prepare evidence of mitigating circumstances of any criminal history that is accurately captured in the report.

Advocates in Washington state were the first to push forward a portable screening report bill, the Fair Tenant Screening Act.¹¹⁰ The final bill requires landlords to provide prospective applicants with detailed information about their screening criteria and practices, including whether they accept portable screening reports, and prohibits landlords from charging additional

application fees if they have accepted a portable screening report. The Washington law falls short, however, of requiring that all landlords accept portable screening reports.

Other policies that advocates can pursue to reduce or eliminate the disproportionate impact of application fees on people of color, particularly low-income families and people with a criminal record include:

- Banning the use of housing application fees.
- Requiring that landlords refund application fees to rejected applicants.
- Capping application fees at a reasonable amount.

Administrative Plans

Local ordinances can broadly limit how landlords screen prospective applicants, but there are other types of policies that impact access to affordable housing. For example, local administrative plans that apply to particular housing programs are an important way to expand housing opportunities for people reentering, especially those who wish to reunify with family. Because most local plans require public participation in their development, it is relatively easy for advocates, organizers, and tenants to have an impact on the screening criteria. This section will focus on the major types of plans that govern the housing choice voucher (Section 8), public housing, and Low Income Housing Tax Credit programs in your community. These are the Administrative Plan (Admin Plan), the Admissions and Continued Occupancy Plan (ACOP), and the Qualified Allocation Plan (QAP), respectively.

Each of these plans serves a unique purpose, so advocacy strategies will differ. In general, though, the emphasis of your advocacy in this context should be on reasonable admissions policies for all housing programs and/or a set-aside of units or an admission priority for individuals with criminal records and their families. For additional information on how to use these plans to advocate for more inclusive tenant screening policies, see NHLP's guide, [*An Affordable Home on Reentry*](#).¹¹¹

108. Owners of HUD-assisted properties are prohibited from charging application fees 24 C.F.R. 5.903(d)(4) and 5.905(b)(5).

109. National Consumer Law Center, *Broken Records: How Errors by Criminal Background Checking Companies Continue to Harm Consumers Seeking Jobs and Housing* (2019) available at: <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf?eType=EmailBlastContent&eld=8eb6cbd4-fa57-49eb-a26e-386cb1fe6599>

110. Washington SHB 1257 (March 5, 2015); RCW 59.18.257.

111. Available at: <https://www.nhlp.org/wp-content/uploads/2018/08/Reentry-Manual-2018-FINALne.pdf>



Admin Plans and ACOPs

Housing authorities administer both public housing and Section 8 programs and are responsible for developing and implementing plans that govern the day-to-day operations of those programs. HUD requires that certain policies be included in a housing authority's Section 8 Admin Plan and its public housing ACOP, including details of the housing authority's admissions criteria. Most Admin Plans and ACOPs can be found on the housing authority's website.

Section 8 vouchers and public housing are subject to federal laws that regulate the eligibility of individuals who have been released from incarceration or have engaged in prior criminal activity. Pursuant to federal statutes and regulations, housing authorities must reject applicants in three specific categories for these programs:

- People with convictions for methamphetamine production on federally assisted property;¹¹²
- Lifetime registered sex offenders under any state registry;¹¹³ and
- Those with evictions during the previous three years for drug-related criminal activity, absent evidence of rehabilitation.¹¹⁴

Housing authorities are only limited by the federal requirements above. Housing authorities have discretion over whether or not to reject an applicant based on any other type of criminal history. HUD encourages housing authorities to exercise this discretion in favor of "allowing ex-offenders to rejoin their families in the Public Housing or Housing Choice Voucher programs, when appropriate."¹¹⁵ Even Congress has placed limits on housing authority discretion by limiting the grounds on which housing authorities may opt to reject an applicant to: drug related criminal activity, violent criminal activity, or other criminal activity that would threaten the health or safety of other residents or housing authority staff.¹¹⁶ In addition, housing authorities policies must include "reasonable" lookback periods that only consider criminal history going back a limited period of time prior to admission. Nonetheless, housing authorities

112. 42 U.S.C. § 1437n(f)(1); 24 C.F.R. § 960.204(a)(3) (public housing); 24 C.F.R. § 982.553(a)(1)(ii)(c) (vouchers).

113. 42 U.S.C. § 13663(a); 24 C.F.R. § 960.204(a)(4) (public housing); 24 C.F.R. § 982.553(a)(2)(i) (vouchers).

114. 42 U.S.C. § 13661(a); 24 C.F.R. § 960.204(a)(1) (public housing); 24 C.F.R. § 982.553(a)(1)(i) (vouchers).

115. Letter from Shaun Donovan, HUD Secretary, to PHA Executive Directors at 1-2 (June 17, 2011).

116. 42 U.S.C.A § 1437a(b)(9) (West 2019).

across the country have exercised their discretion to adopt overly restrictive screening policies that create unnecessary barriers to people with a criminal history.¹¹⁷

HUD issued guidance in 2015 and 2016 explaining that overly restrictive criminal records screening policies can have fair housing implications,¹¹⁸ and why arrest records alone should never be the sole basis of an adverse housing decision.¹¹⁹ For example, in its fair housing guidance, HUD states that blanket bans on certain criminal history (for example, “no felonies”) is probably illegal under fair housing law.¹²⁰ You should review the housing authority’s local plans with the following questions in mind:

- Does the policy include any blanket bans, such as “no felonies”?
- Does the policy include restrictions on criminal history that do not affect the health and safety of other residents or housing authority staff?
- Does the policy include a reasonable lookback period?
- Is there an opportunity for applicants to present mitigating circumstances of the criminal activity?
- Does the plan allow the use of arrests as the sole basis for a decision?

Advocates in a number of jurisdictions have had success influencing public housing and voucher program admission policies as they relate to people reentering. For example, advocates in New Orleans worked with formerly incarcerated individuals, representatives of law enforcement, the Housing Authority of New Orleans (HANO) and others for several years to improve HANO’s admissions policy. The result is an innovative approach to tenant screening that rules out certain criminal activity as a factor in admissions decisions, clearly defines lookback periods, and includes a hearing process that allows an applicant to submit mitigating circumstances surrounding the conviction and rehabilitation. Engaging in the housing authority

plan process with regard to admissions screening criteria can be a critical part of your fair chance campaign. In addition, you may need to advocate for changes to these plans to make your fair chance policy effective.

Qualified Allocation Plan

The Low Income Housing Tax Credit (LIHTC) program is the largest source of new affordable housing in the United States. There are about two million tax credit units today, and the number continues to grow by an estimated 100,000 annually. The program is administered by the Internal Revenue Service (IRS), a bureau of the Department of the Treasury.

The IRS distributes tax credits to each state for construction or rehabilitation of housing. Each state then allocates the tax credits to sponsors of LIHTC housing in accordance with a state-adopted Qualified Allocation Plan (QAP). The QAP sets forth the state’s LIHTC allocation plan and project selection criteria.¹²¹ The IRS requires that state LIHTC agencies update their QAP plans annually and that they do so after a hearing that has been reasonably noticed to the public.¹²² A copy of each state’s QAP is available online.¹²³

The tax credit program itself does not have any requirements with respect to screening for criminal history, nor does it require LIHTC properties to have screening policies in writing or accessible to prospective tenants. Aside from fair housing and civil rights laws then, tenant screening is fully within the discretion of private LIHTC landlords. Unfortunately, this means that many tax credit properties adopt overly restrictive screening criteria.

You can take advantage of the QAP planning and public hearing process to advocate for inclusive screening policies for all LIHTC-financed developments in your state. Policies could address a prohibition on the use of arrests as the basis for a denial or a requirement that LIHTC owners and managers conduct an

117. Marie Claire Tran-Leung, *When Discretion Means Denial: The Use of Criminal Records to Deny Low-Income People Access to Federally Subsidized Housing in Illinois* (2011).

118. Dept. Hous. and Urb. Dev., *Office of General Counsel Guidance on Application of Fair Housing Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (2016).

119. Guidance for Public Housing Agencies (PHAs) and Owners of Federally Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, PIH 2015-19 (Nov. 2, 2015).

120. Dept. Hous. and Urb. Dev., *Office of General Counsel Guidance on Application of Fair Housing Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* 6 (2016).

121. 26 U.S.C.A. § 42(m)(1)(A)(i) (West 2019).

122. *Id.*

123. Copies of the 2017 QAPs are available at <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/application-allocation/qaps-and-applications/2017-qaps-and-applications>. QAPs for other years are available at the same site.

individualized assessment of applicants with criminal records.

For example, the Georgia Housing Finance Agency, in its QAP, requires all LIHTC properties to have a clearly defined screening policy that “establishes criteria for renting to prospective tenants that is not a violation of the Fair Housing Act” and that contains “reasonable and non-discriminatory policies around applicant income, employment requirements, and background checks.”¹²⁴ Georgia’s policy further requires that all screening policies (at a minimum) incorporate the following:

- Arrest records are not a valid reason to deny an applicant housing;
- Applicants with a criminal conviction may be denied housing only if the reason for their conviction clearly demonstrates that the safety of residents and/or property is at risk; and
- Blanket terms in screening criteria, that say “Any criminal convictions will be denied” are considered discriminatory and in violation of the Fair Housing Act.¹²⁵

QAP advocacy can have a broad impact on people seeking to live in LIHTC housing in your state as well as on the effectiveness of a local fair chance ordinance that is intended to apply to LIHTC properties. You can inquire with your state allocation agency about when the QAP process begins so you know when to submit public comment on admissions and criminal history.

124. Georgia Department of Community Affairs, Qualified Allocation Plan, Section 21(L) (2018).

125. *Id.*

7.0 Conclusion

Developing a fair chance ordinance that effectively expands housing access for people with criminal records and serves the needs of your local community will require input from a wide range of community members and organizations and careful attention to the details. We hope that this toolkit will help you achieve your goals in this important work.

NHLP staff are available to provide technical assistance to organizers and advocates drafting fair chance ordinances. Please email nhlp@nhlp.org for assistance.

A photograph of a sign with the text "EVERYONE IS WELCOME". The sign is split into two horizontal sections. The top section is dark grey or black with the words "EVERYONE IS" in white, uppercase, sans-serif font. The bottom section is bright yellow with the word "WELCOME" in large, bold, black, uppercase, sans-serif font. The sign appears to be made of wood or a similar material, with some texture visible. The number 32 is printed in small black font at the bottom center of the yellow section.

EVERYONE IS
WELCOME

8.0 Appendices

8.1 NHLP Existing Fair Chance Ordinances Chart

Jurisdiction, title and citation	Summary of ordinance
<p>San Francisco, CA</p> <p>Fair Chance Ordinance</p> <p>Ordinance No. 17-14 (2014)</p> <p>S.F. Police Code, Article 49</p> <p>Note: San Francisco adopted procedural rules (included in the Toolkit Appendix).</p>	<p>Applies to all housing funded in whole or in part by the City and below-market-rate units.</p> <p>Prohibits criminal history screening except for felony convictions in the past 7 years and pending unresolved arrests, except if required by federal law.</p> <p>No criminal history screening until applicant is determined to be otherwise qualified for the unit. Denials based on criminal history require written notices and an individualized assessment.</p> <p>Includes an administrative complaint procedure administered by the City's Human Rights Commission.</p> <p>Private right of action only after a person alleging a violation has exhausted administrative remedies.</p>
<p>Newark, NJ</p> <p>Ordinance 14-0921 (2015)</p> <p>Not codified at the direction of the City.</p>	<p>Applies to all housing.</p> <p>Limits criminal history screening to: serious offense convictions for 8 years following release from post-conviction custody or from the date of sentencing (if no incarceration); specified minor offense convictions or municipal ordinance violations for 5 years following release from post-conviction custody or from the date of sentencing (if no incarceration); pending criminal charges; convictions for certain specified offenses (e.g., murder, arson, sex offenses), regardless of when they occurred.</p> <p>Denials based on criminal history require an individualized assessment and a notice of adverse action.</p> <p>No enforcement mechanism provided.</p>

Jurisdiction, title and citation	Summary of ordinance
<p>Champaign, IL</p> <p>City of Champaign Code of Ordinances Ch. 17 Article I, §§ 17.3 (11) - 17.4.5 and Article V §§ 17.71, 17.75.</p> <p>Note: In June 2019, the Champaign City Council started re-examining the scope of the permissible criminal history screening.</p>	<p>Amended existing anti-discrimination statute to prohibit discrimination based on criminal history except specific crimes enumerated in the ordinance, such as: forcible felony, felony drug conviction or conviction for the sale, manufacture or distribution of illegal drugs, unless applicant has not re-offended for 5 years following release from incarceration. Further exception for preferences by religious organizations.</p> <p>Includes an administrative complaint procedure administered by the Human Rights Commission. Parties may seek review of a decision by the Commission in court.</p>
<p>Urbana, IL</p> <p>Urbana Code of Ordinances, Ch. 12, Article III, §§ 12-37, 12-64.</p>	<p>Applies to all housing except owner-occupied where owner anticipates sharing living space with prospective tenant.</p> <p>Amended existing anti-discrimination statute to prohibit discrimination based on criminal history. Exception for preferences for elderly or disabled tenants.</p> <p>Includes an administrative complaint procedure administered by the Human Rights Commission. Parties may seek review of a decision by the Commission in court.</p>

Jurisdiction, title and citation	Summary of ordinance
<p>Richmond, CA</p> <p>Fair Chance Access to Affordable Housing, Ord. No. 20-16 N.S. (2016)</p> <p>Richmond Municipal Code Article VII, Ch. 7.110</p> <p>Note: Richmond adopted detailed implementing rules in 2019 (included in the Toolkit Appendix).</p>	<p>Applies to affordable housing providers (including private landlords renting to Section 8 voucher-holders)</p> <p>Prohibits housing providers from screening for any criminal history except “directly-related” convictions no more than two years old; or as required in certain federally assisted programs.</p> <p>No criminal history screening until applicant is determined to be otherwise qualified for the unit and is offered a conditional lease. Denials based on criminal history require an individualized assessment and a written notice.</p> <p>Includes an administrative appeal process. If an applicant files an administrative appeal within 14 days of a denial, the owner must hold the unit open until the appeal process is completed.</p> <p>Includes a private right of action.</p>

Jurisdiction, title and citation	Summary of ordinance
<p>Seattle, WA</p> <p>Fair Chance Housing</p> <p>Ordinance 125393 (2017)</p> <p>Seattle Municipal Code Ch. 14.09</p>	<p>Applies to all housing types except single-family owner-occupied and in-law units where owner lives on the same premises.</p> <p>Prohibits as an unfair practice consideration of arrest records, criminal history, or conviction records when deciding whether to rent to a prospective tenant, except if required by federal law.</p> <p>Permits landlords to check official sex offender registries subject to certain restrictions. Requires a written notice and an individualized assessment before any denial based on sex offender status.</p> <p>Includes an administrative complaint procedure administered by the Seattle Office for Civil Rights.</p> <p>Note: This ordinance was challenged in a case pending in federal court, Yim v. City of Seattle, Case No. 2:18-cv-00736-JCC (W.D. Wash.). In November 2019, the Washington Supreme Court issued a ruling in a related matter, Certification in Yim v. City of Seattle, Case No. 96817-9 (Wash., Nov. 14, 2019), that indicates that the City of Seattle will likely win the case and the fair chance ordinance will stand.</p>
<p>Washington D.C.</p> <p>Fair Criminal Record Screening for Housing Act of 2016</p> <p>D.C. ACT 21-677 (2017)</p> <p>D.C. Law 21-259</p> <p>District of Columbia Code Ch. 35B, §§ 42-3541.01-.10</p>	<p>Applies to all housing types except owner-occupied properties with 1-3 units.</p> <p>Prohibits criminal history screening except for felony convictions or pending charges for specified offenses in the past 7 years except if required by federal law.</p> <p>No criminal history screening until applicant is determined to be otherwise qualified for the unit and receives a conditional offer. Denials based on criminal history require an individualized assessment.</p> <p>Includes an administrative complaint procedure administered by the Office of Human Rights.</p>

Jurisdiction, title and citation	Summary of ordinance
<p>Cook County, IL</p> <p>Just Housing Amendment</p> <p>Cook County Code of Ordinances, Ch. 42, Article II, § 42-38 (2019).</p> <p>Note: Cook County has adopted interpretive rules for this ordinance (included in the Toolkit Appendix).</p>	<p>Applies to all housing (subject to possible limitation in implementing regulations).</p> <p>Amended existing anti-discrimination statute to prohibit discrimination based on criminal history. Exceptions for persons subject to current sex offender registration requirement or a current child sex offender residency restriction; and convictions that present a “demonstrable risk” to personal safety and/or property.</p> <p>No criminal history screening until applicant is determined to be otherwise qualified for the unit and receives a conditional offer. Denials based on criminal history require an individualized assessment and a written notice.</p> <p>Provides for an administrative complaint procedure.</p>
<p>Detroit, MI</p> <p>Fair Chance Access to Rental Housing</p> <p>Chapter 26, Article V, §§ 26-5-1 – 26-5-20 of the 1984 Detroit City Code (2019)</p>	<p>Applies to rental properties with 5 or more units.</p> <p>Housing providers may only take adverse action against an applicant based on a “directly-related conviction” that has a “direct and specific negative bearing on the safety of persons or real property”. Includes a non-exclusive (and very broad) list of offenses that qualify as “directly-related” convictions, such as any violent or drug-related felony, any felony committed in the past 10 years or any imprisonment for a felony in the past 5 years.</p> <p>No criminal history screening until applicant is determined to be otherwise qualified for the unit and receives a conditional lease. Denials based on criminal history require an individualized assessment and a written notice.</p> <p>Provides for an administrative complaint procedure administered by the Detroit Department of Civil Rights, Inclusion and Opportunity.</p>

Jurisdiction, title and citation	Summary of ordinance
<p>Portland, OR</p> <p>Fair Access in Renting Ordinance No. 189580 (2019)</p> <p>Portland City Code § 30.01.86</p> <p>Note: Includes a “first-in-time” requirement in addition to optional restriction on criminal history screening.</p>	<p>Applies to all housing except certain specified affordable housing, units shared with owner, duplexes where owner occupies one unit and accessory dwelling units where owner lives on the same parcel.</p> <p>Requires housing providers to either use specified “Low-Barrier Screening Criteria” (or less prohibitive criteria) that restrict screening for certain specified types of criminal history (including felonies with sentencing in past 7 years or misdemeanors with sentencing in the past 3 years) or use their own more prohibitive screening criteria but conduct an individualized assessment and provide a written denial notice.</p> <p>Includes a private right of action.</p>
<p>Minneapolis, MN</p> <p>Applicant Screening Criteria for Prospective Tenants Ordinance (2019)</p> <p>Minneapolis Code, Title 12, Ch. 244, § 244.2030</p>	<p>Applies to all housing, though exceptions will likely be developed through regulations. Effective date is 6/1/2020, but for owners of properties with ≤ 15 units, it is delayed 6 months to 12/1/2020.</p> <p>Requires housing providers to either use specified “Inclusive Screening Criteria” (or less prohibitive criteria) that restrict screening for certain specified types of criminal history (including felonies with sentencing in past 7 or 10 years (depending on the type of offense) or misdemeanors with sentencing in the past 3 years) or use their own more prohibitive screening criteria but conduct an individualized assessment and provide a written denial notice.</p> <p>Includes a private right of action.</p>

8.2 NHLP Fair Chance Checklist

Fair Chance Ordinance Checklist

Where is the ordinance housed (e.g., municipal code, police code, health & safety code)?

What types of housing (e.g., affordable housing, private housing, both) does the ordinance apply to? Are there exceptions?

What records and information relating to criminal history are landlords allowed to consider?

What screening procedures do landlords have to follow?

What is the administrative complaint/appeal process?

What is the statute of limitations (deadline) for filing an administrative complaint/appeal?

Is there a private right of action? If so, what is the statute of limitations (deadline) for filing a case in court?

What are the penalties for noncompliance?

When and how will the ordinance be implemented?

What are the requirements about informational notices to applicants?

What are the reporting requirements (data or otherwise)?

How does the ordinance deal with possible federal or state preemption issues?

8.3 City of San Francisco Procedures for Considering Arrests and Convictions in Employment and Housing Decisions

Rules of Procedure

San Francisco Police Code

Article 49

Procedures for Considering Arrests and Convictions
in Employment and Housing Decisions



**CITY AND COUNTY OF SAN FRANCISCO
HUMAN RIGHTS COMMISSION**

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I. Introduction

After public hearings and considerations of testimony and documentary evidence, the Board of Supervisors found that the health, safety, and well-being of San Francisco's communities depend on increasing access to employment and housing opportunities for people with arrest or conviction records. In response, the Board of Supervisors unanimously voted to pass the "Fair Chance Ordinance" in February of 2014.

The Fair Chance Ordinance provides people with prior arrest and conviction records the opportunity to be considered for employment and housing on an individual basis, thereby affording them with a fair chance to acquire employment and housing, to effectively reintegrate into the community, and to provide for their families and themselves.

The Commission is also aware of the disproportionate arrest and incarceration of African Americans, Latinos, and Native Americans and the lifelong post-conviction stigma that follows individuals and compromises their human rights and ability to reintegrate into society. By reducing barriers, the Fair Chance Ordinance promotes public safety and reintegration. In addition, the Ordinance redresses some of the human rights concerns implicated by the over-incarceration of these communities.

The Fair Chance Ordinance was codified as San Francisco Police Code Article 49: Procedures for Considering Arrests and Convictions and Related Information in Employment and Housing Decisions ("Article" or "Article 49").

II. Preemption and Scope of Authority

Article 49 instructs the Human Rights Commission (HRC), in consultation with the Mayor's Office of Housing and Community Development (MOHCD), to establish rules and regulations that implement the housing provisions of the Article.

Article 49 authorizes the HRC, in consultation with the MOHCD, to take appropriate steps to enforce the Article and coordinate enforcement, including the investigation of any possible violations of the Article.

In developing these rules, the HRC is guided by its understanding of the importance of fulfilling the goals of this Article and has given weight to considerations of equity and practicality. The rules seek to provide clear direction to affordable housing providers and housing applicants and residents regarding the requirements of this Article.

Nothing in these rules shall be interpreted or applied so as to create any requirements, power or duty in conflict with federal or state law or with a requirement of any government agency, including any agency of City government, implementing federal or state law. The HRC is not authorized to enforce any provision of Article 49 upon determination that its application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

III. DEFINITIONS

The definitions are derived directly from Article 49 of the San Francisco Police Code.

Adverse Housing Action in the context of housing shall mean to evict from, fail or refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or to reduce any tenant subsidy. The “Adverse Action” must relate to real property in the City.

Affordable Housing shall mean any residential building in the City that has received funding from the City, connected in whole or in part to restricting rents, the funding being provided either directly or indirectly through funding to another entity that owns, master leases, or develops the building. Affordable Housing also includes “affordable units” in the City as the term is defined in Article 4 of the Planning Code. Projects that are financed using City-issued tax exempt bonds, but that receive no other funding from the City or are not otherwise restricted by the City shall not constitute Affordable Housing.

Arrest shall mean a record from any jurisdiction that does not result in a conviction and includes information indicating that a person has been questioned apprehended taken into custody or detained, or held for investigation, by a law enforcement, police, or prosecutorial agency and/or charged with, indicated, or tried and acquitted for any felony, misdemeanor or other criminal offense. “Arrest” is a term that is separate and distinct from, and that does not include, “Unresolved Arrest.”

Background Check Report shall mean any criminal history report, including but not limited to those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement or police agencies, or courts, or by any consumer reporting agency or business, employment screening agency or business, or tenant screening agency or business.

Conviction shall mean a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor; provided that the conviction is one for which the person has been placed on probation, fined, imprisoned, or paroled. The definition of a conviction shall not include items listed in Section V.A. of these Rules.

Conviction History shall mean information regarding one or more Convictions or Unresolved Arrests, transmitted orally or in writing or by another means, and obtained from any source, including but not limited to the individual to whom the information pertains and a Background Check Report.

Directly-Related Conviction in the housing context shall mean that the conduct for which a person was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing. In determining whether the conviction or Unresolved Arrest is directly related to the housing, the Housing Provider shall consider whether the housing offers the opportunity for the same or a similar offense to occur and whether circumstances leading to the conduct for which the person was convicted will recur in the housing, and whether supportive services that might reduce the likelihood of a recurrence of such conduct are available on-site.

Evidence of Rehabilitation or Other Mitigating Factors may include but is not limited to:

- A person's satisfactory compliance with all terms and conditions of parole and/or probation (however, inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with terms and conditions of parole and/or probation);
- Employer recommendations, especially concerning a person's post-conviction employment, educational attainment, vocation, or vocational or professional training since the conviction, including training received while incarcerated;
- Completion of or active participation in rehabilitative treatment (e.g., alcohol or drug treatment);
- Letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, or parole/probation officers who have observed the person since his or her conviction;
- Age of the person at the time of the conviction.
- Examples of other mitigating factors that are offered voluntarily by the person may include but are not limited to explanation of the precedent coercive conditions, intimate physical or emotional abuse, or untreated substance abuse or mental illness that contributed to the conviction.

Fair Chance Ordinance or Fair Chance Act – The name commonly used to refer to Article 49 of the San Francisco Police Code: Procedures for Considering Arrests and Convictions and Related Information in Employment and Housing Decisions.

Housing provider shall mean any entity that owns, master leases, or develops Affordable Housing in San Francisco. "Housing Provider" also includes owners and developers of below-market-rate housing in the City or "affordable units."

Inquire shall mean any direct or indirect conduct intended to gather information from or about an applicant, candidate, potential applicant or candidate, using any mode of communication, including but not limited to application forms, interviews, and background check reports.

Person shall mean any individual, person, firm, corporation, business or other organization or group of persons however organized.

Unresolved Arrest shall mean an arrest that is undergoing an active pending criminal investigation or trial that has not yet been resolved. An arrest has been resolved if the arrestee was released and no accusatory pleading was filed charging him or her with an offense, or if the charges have been dismissed or discharged by the district attorney or the court.

IV. Procedures for the Advertisements, Applications, and Interviews

Nothing in the Ordinance affects additional appeals procedures or rights afforded to tenants and housing applicants elsewhere. In addition, nothing in the Ordinance mandates a conviction inquiry or background check. Affordable housing providers who do not inquire about an applicant's prior unresolved arrests or conviction record or who do not perform background checks on applicants are in compliance with this Article. Affordable housing providers who choose to inquire about an applicant's unresolved arrests or conviction history or who perform background checks must comply with the following procedures.

A. Advertisements and Solicitations

1. No Blanket Exclusions

Housing providers may not produce or disseminate any advertisement related to affordable housing that expresses, directly or indirectly, that any person with an arrest or conviction record will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by local, state, or federal law.

2. Applicants with Prior Arrest and Conviction Records will be Considered

Housing providers are required to state in all solicitations or advertisements for the rental or lease of affordable housing placed by the housing provider, or on behalf of the housing provider, that the housing provider will consider for tenancy qualified applicants with arrest or conviction record in a manner consistent with the requirements of this Article.

B. HRC Notice and Posting Requirements

The HRC is responsible for publishing and making available to affordable housing providers a notice suitable for posting that informs applicants of their rights under this Article. The HRC shall make this notice available to housing providers in English, Spanish, Chinese, and Tagalog and all other languages spoken by more than 5% of the San Francisco population.

1. Website

Housing providers must prominently post on their website the HRC notice in all of the languages referenced above.

2. Frequently Visited Locations

Housing providers must prominently post the HRC notice in all the languages referenced above at any location under their control that is frequently visited by applicants or potential applicants for the rental or lease of affordable housing in San Francisco.

3. Languages Access

In addition to making the notice available in English, Spanish, Chinese, and Tagalog, the HRC shall update the notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco population.

C. Interviews and Applications: No Inquiry Prior to Determination of Qualification

Housing providers may not at any time ask an applicant in person, on an application or by any other means to disclose any details about his or her or a household member's conviction history, until the housing provider has first determined that:

- 1) The applicant is legally eligible to rent the housing unit, and
- 2) The applicant is qualified to rent the housing unit under the housing provider's criteria for assessing rental history and credit history, if such assessments are used by the housing provider.

D. Obtain but not Review

For the sake of efficiency, a housing provider may obtain a conviction history report at the same time as the housing provider obtains the rental history report and credit history report for an applicant. However, a housing provider may not in any way look at or review the conviction history report until *after* determining that based on the rental history and credit history the applicant is qualified to rent the housing unit. Housing providers must employ practices and safeguards to ensure that conviction history information is not inadvertently viewed prior to a determination of qualification for a housing unit. It is a violation of this Ordinance if the records are viewed prior to a determination of qualification.

E. Notice Requirement

2. Notice to Applicant Prior to Conducting Criminal Background Inquiry

In addition to posting the notice prominently on the website and in frequently visited locations, housing providers must individually provide each housing applicant a copy of the HRC issued notice referenced above in IV.B prior to any conviction history inquiry.

3. Language Access

If a housing applicant speaks Spanish, Chinese, Tagalog or any other language spoken by more than 5% of the San Francisco population, the housing provider must provide the applicant with the HRC notice in his or her respective language.

V. Procedures for Decision Making

A. Prohibited Inquiries and Considerations

Housing providers may not at any time or by any means inquire about, require disclosure of, or if such information is received, base an adverse action in whole or in part on any of the following:

1. An arrest not leading to a conviction, unless it is an “unresolved arrest” as defined in Section III above;
2. Participation in or completion of a diversion or a deferral of judgment program;
3. A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative;
4. A conviction or any other determination or adjudication in the juvenile justice system or information regarding a matter considered in or processed through the juvenile justice system;
5. A conviction that is more than 7 years old, the date of conviction being the date of sentencing;
6. Information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

Inquiring about or basing any adverse decision on any of the above 6 categories is a violation of Article 49. To ensure that none of this prohibited information is considered, affordable housing providers should explicitly exclude the above-information from any inquiry into conviction history. For example, if a criminal history questionnaire is required of an applicant, it should state that the above-information should not be disclosed. In addition, commercial background check companies should be informed that the above-information should not be included in any report.

Any affordable housing provider who decides to conduct a commercial background check should be aware that these reports can be inaccurate or incomplete. Upon receiving notice that information contained in the report falls into one of the prohibited 6 categories, the affordable housing provider should not consider or rely upon that criminal history information to take an adverse action.

B. Consideration Limited to Directly-Related Convictions and Unresolved Arrests

Affordable housing providers may only consider directly-related convictions within the past 7 years or directly-related unresolved arrests for a housing decision. A directly-related conviction or unresolved arrest means the following: The conduct for which a person was convicted or that is the subject of an unresolved arrest has a **direct and specific negative** bearing on the safety of persons or property, given the nature of the housing.

In determining whether the conviction or unresolved arrest is directly related to the housing, the housing provider shall consider:

- Whether the housing offers the opportunity for the same or a similar offense to occur;
- Whether circumstances leading to the conduct for which the person was convicted will recur in the housing;
- Whether supportive services that might reduce the likelihood of a recurrence of such conduct are available on-site.

In addition to considering whether a conviction or an unresolved arrest is directly-related as defined above, the housing provider shall also consider the time that has elapsed since the conviction or unresolved arrest.

If a housing provider determines that a conviction or an unresolved arrest is not directly-related or that reasonable times has elapsed, no further action is required. If however, the housing provider intends to take adverse action based on a directly-related conviction within the past 7 years or a directly-related unresolved arrest, the housing provider must comply with the rules below.

C. Written Notice and Copy of Report Prior to Prospective Adverse Action

If a housing provider intends to take an adverse action based on directly-related conviction within the past 7 years or a directly-related unresolved arrest, the housing provider must take the following steps:

1. Notify the applicant in writing of the prospective adverse action;
2. Give the applicant a copy of any conviction history or unresolved arrest;
3. Specifically indicate the item or items forming the basis for the prospective adverse action;
4. Provide the applicant with a copy of language-appropriate HRC notice described in Section IV.B which explains the applicant's right under this Article, including his or her right to respond, the manner in which he or she may respond, and the evidence he or she may submit; and
5. Provide the applicant with the opportunity to respond and delay any adverse action in order to reconsider in light of evidence submitted by the applicant.

Examples of housing related adverse actions include, but are not limited to, eviction, failing or refusing to rent or lease property to an individual, failing or refusing to add a household member to an existing lease, or reducing any tenant subsidy.

D. Opportunity to Respond

Within 14 days of the date of the written notice described above in Section V.C., the applicant, or any person on behalf of the applicant, may give the housing provider notice orally or in writing of evidence of any of the following:

1. Inaccuracies of the item or items of conviction history; examples of inaccuracies include but are not limited to:
 - a. Mismatching of the subject of the report with another person;
 - b. Revealing restricted information;
 - c. Omitting information of how an arrest was resolved;
 - d. Repeating the same information giving the appearance of multiple offenses;
 - e. Mischaracterizing the seriousness of the offense;
2. Evidence of rehabilitation; examples of evidence of rehabilitation include but are not limited to:
 - a. A person's satisfactory compliance with all terms and conditions of parole and/or probation (however, inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with terms and conditions of parole and/or probation);
 - b. Employer recommendations, especially concerning a person's post-conviction employment, educational attainment or vocation or vocational or professional training since the conviction, including training received while incarcerated;
 - c. Completion of or active participation in rehabilitative treatment (e.g., alcohol or drug treatment);
 - d. Letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, or parole/probation officers who have observed the person since his or her conviction;
 - e. Age of the person at the time of the conviction.
3. Evidence of other mitigating circumstances; examples of mitigating factors that are offered voluntarily by the person may include but are not limited to:
 - a. Explanation of the precedent coercive conditions;
 - b. Intimate physical or emotional abuse;
 - c. Untreated substance abuse or mental illness that contributed to the conviction.

E. Conduct an Individualized Assessment

A housing provider may not deny an applicant based on his or her prior conviction history without first conducting an individualized assessment. In conducting an individualized assessment, the housing provider must consider only directly-related convictions and directly-related unresolved arrests and the time that has elapsed since the conviction or unresolved arrest. In addition to considering the time that has elapsed, the housing provider shall also review and consider any evidence of inaccuracy or evidence of rehabilitation or other mitigating factors provided by the applicant on the applicant's behalf.

The HRC shall not find a violation based on a housing provider's decision that an individual applicant's conviction history or unresolved arrest is directly-related, but may otherwise find a violation of this Article. For example, a violation may be found if the housing provider failed to take the steps to conduct an individualized assessment, including determining whether a conviction or unresolved arrest is directly-related, considering the time elapsed, or reviewing and considering evidence presented by the applicant.

F. Delay Adverse Action to Reconsider

A housing provider must delay any adverse action for a reasonable period after receipt of information and, during that time, shall reconsider the prospective adverse action in light of the information.

G. Written Notification of Adverse Action

Upon taking any adverse action based on an unresolved arrest or conviction history of an applicant, the housing provider shall notify the applicant within a reasonable time and in writing of the final adverse action.

VI. Retaliation

Housing providers or any other person may not interfere with, restrain, or deny the exercise of or the attempt to exercise any right protected under this Article. This includes interrupting, terminating or failing or refusing to initiate or conduct a transaction involving the rental or lease of residential real property, including falsely representing that a residential unit is not available for rental or lease. This also includes taking adverse action against a person or family member in retaliation for exercising rights protected under the Article. These protections apply to any person who mistakenly, but in good faith, alleges violation of this Article. Examples of what may constitute adverse action are defined above in these Rules.

A. Protected Exercise of Right under this Article

The following activities include, but are not limited to, the protected exercise of right under this Article:

1. The right to file a complaint;
2. The right to inform any person about a housing provider's alleged violation of the Article;
3. The right to cooperate with the HRC or other persons in the investigation or prosecution of any alleged violations of the Article;
4. The right to oppose any policy, practice or act that is unlawful under this Article;
5. The right to inform any person of his or her rights under this Article

B. 90-Day Presumption

Taking adverse action against a person within 90 days of the exercise of one or more of the rights described above shall create a rebuttable presumption that such adverse action was taken in retaliation for the exercise of these rights.

VII. Filing a Complaint with the HRC

A. Who May Report

An applicant or any other person may report to the HRC any suspected violation of this Article.

B. HRC-Initiated Investigations

The HRC may, in its sole discretion, investigate possible violations of this Article on its own initiative.

C. Elements of a Complaint

A complaint may be made in writing, or if made orally, shall be put in writing by HRC staff. The complaint shall contain the following:

1. The complete name and contact information of the person making the complaint, unless the person making the complaint wishes to remain anonymous;
2. A plain and concise statement of facts, which provide the basis of the complaint, including the specific date(s), action(s), practice(s) or incident(s) alleged to violate this Article;
 - a. The signature of the person making the complaint verifying under penalty of perjury that the response is true and complete to the best of the signatory's knowledge and belief. In cases in which the complainant wishes to remain anonymous or in HRC initiated complaints, the complaint shall be verified by an HRC staff;
3. Possible violations of the Article include, but are not limited to, the following examples:
 - a. An advertisement for affordable housing that does not state that the provider will consider qualified applicants with criminal histories;
 - b. An advertisement for affordable housing that expresses directly or indirectly that a person with an arrest or conviction record will not be considered;
 - c. An application for affordable housing that contains an inquiry about prior arrest or conviction record;
 - d. A housing provider who inquires about an applicant's conviction background prior to determining eligibility for housing;
 - e. A housing provider who reviews an applicant's conviction report prior to determining eligibility for housing;
 - f. A housing provider who inquires about an applicant's conviction background prior to providing applicant the HRC notice informing them of their rights under this Article;
 - g. A housing provider who does not post the HRC notice on its website;
 - h. A housing provider who does not post HRC notice in locations frequented by tenants or housing applicants;

- i. A housing provider who does not provide the HRC notice in the languages mandated by the ordinance;
- j. A housing provider who inquires about or considers one of the six off-limits categories, enumerated in section V.A. of these Rules and Section 4906 of Article 49;
- k. A housing provider who does not give an applicant a copy of the conviction history report or an unresolved arrest prior to taking a prospective adverse action;
- l. A housing provider who does not specify which conviction or unresolved arrest is the basis for the adverse action;
- m. A housing provider who does not give an applicant notice of their right to provide evidence of inaccuracies and evidence of rehabilitation or mitigating circumstances;
- n. A housing provider who does not offer the applicant 14 days to provide evidence of inaccuracies and evidence of rehabilitation or mitigating circumstances;
- o. A housing provider who fails to conduct an individualized assessment. The HRC may not find a violation based on a housing provider's decision that an applicant's conviction within the past 7 years or unresolved arrest is directly-related, but may find a violation of this Article if the housing provider failed to take the steps to conduct the individualized assessment, which requires determining whether a conviction or unresolved arrest is directly-related, considering the time elapsed, and reviewing and considering evidence presented by the applicant;
- p. A housing provider who does not delay the adverse action until they have reconsidered the decision in light of evidence provided by the applicant;
- q. A housing provider who does not provide notice of a final adverse action to the applicant;
- r. A housing provider who retaliates against someone for exercising his or her rights under this ordinance;
- s. A housing provider who fails to maintain and retain records as required by this Article.

D. Timeliness of a Complaint

A suspected violation of this Article may be reported within 60 days of the date that the suspected violation occurred, or that the complainant became aware that the action violating this ordinance occurred, whichever date occurred more recently.

E. Amending a Complaint

The complaint may be amended any time prior to resolution. HRC shall serve all amended complaints on the housing provider with instructions concerning which

allegations of the amended complaint, if any, the housing provider shall answer, and when the verified response is due. If the amendment occurs before the housing provider has answered, the housing provider shall be served with and shall respond to the amended complaint. The housing provider's time for filing a response shall start upon service of the amended complaint.

F. Withdrawing a Complaint

A complainant may withdraw a complaint any time prior to resolution. HRC shall notify the housing provider in writing within 5 days after the complaint has been withdrawn. A complaint may be withdrawn without prejudice, but nothing in these Rules shall require the HRC to accept a new complaint alleging substantially identical conduct if the complainant has engaged in repeated or unwarranted withdrawal and resubmission of complaints. After a withdrawal, the HRC may, in its sole discretion, initiate an investigation of a possible violation of this article as authorized above in section VII.B.

G. Confidentiality

The HRC shall encourage reporting of violations by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the resident, applicant or other person reporting the violation, unless such a person authorizes the HRC to disclose his or her name and identifying information as necessary to enforce this Article or for other appropriate purposes.

VIII. HRC Notice of Alleged Violation

The HRC shall serve the housing provider with notice that a complaint of an alleged violation has been filed against them and that they are required to respond.

In addition to including the elements of a complaint listed above in VII.C., the notice shall:

- Clearly state the date by which the response is due;
- Inform the housing provider of their right to respond to the alleged violation and describe the information the housing provider is required to include in the response;
- State that failure to respond to the complaint may result in a default decision;
- Offer the housing provider technical assistance;
- Inform the housing provider that retaliation against the complainant or suspected complainant is prohibited by this Article;
- Describe HRC's enforcement powers and administrative penalties;
- Inform the housing provider of his or her right to appeal the HRC Director's determination.

IX. Housing Provider Response

A. Who May File

The housing provider or an authorized representative shall file a verified response to the complaint or amended complaint in writing.

B. Content

A response shall contain the following:

1. The full name and title, where applicable of the housing provider;
2. The name, address, and telephone number of the housing provider's representative, if any;
3. A specific admission or denial of each allegation contained in the complaint. If the housing provider does not have knowledge or information sufficient to form a belief as to the truth of a particular allegation, the housing provider shall so state and such statement shall operate as a denial of the allegations;
4. A statement of any matter constituting an explanation or affirmative defense; and
5. The signature of the housing provider or authorized representative, verifying under penalty of perjury that the response is true and complete to the best of the signatory's knowledge and belief;

C. Timeliness

The response shall be filed within 10 business days of service of the complaint.

D. Amendment of Response

The housing provider, at the discretion of the Commission staff, may amend its response.

E. Failure to Respond to a Complaint

Any party who fails to file a response to a complaint or amended complaint may be held to be in default.

F. Response Shared with Complainant

The HRC shall serve a copy of the response or amended response to the complainant after redacting any confidential information.

X. Enforcement

G. Warning, Notice to Correct, and Technical Assistance

1. First Violation and Violations Prior to August 13, 2015

For a first violation, or for any violation prior to August 13, 2015, the HRC Director must issue a warning and notice to correct and offer the housing provider technical assistance on how to comply with the requirements of this Article.

H. Administrative Penalty

1. Second Violation

For a second violation, the HRC Director may impose an administrative penalty of no more than \$50.00 that the housing provider must pay for each applicant whose rights were violated or continue to be violated.

2. Subsequent Violations

For subsequent violations, the HRC Director may increase the penalty to no more than \$100.00.

3. Multiple Applicants Impacted by Same Violation

If multiple applicants are impacted by the same procedural violation at the same time (e.g. all applicants for a certain housing unit are asked for their conviction history on the initial application) the violation shall be treated as a single violation rather than multiple violations.

4. Allocation of Penalties

The penalties are payable to the City for each applicant whose rights were, or continue to be, violated. Such funds shall be allocated to the HRC and used to offset the costs of implementing and enforcing this Article.

I. Mediation

Mediation refers to a process whereby the HRC staff acts as a neutral third-party to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal, and non-adversarial process with the objective of helping the disputed parties reach a mutual agreement. In mediation, decision-making authority rests with the parties. The role of the HRC as mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving, and exploring resolution alternatives.

Mediation may be initiated at any time after allegations of a violation are presented to the HRC. Either party may make a request to the HRC for mediation. Upon receipt of a request for mediation, or on its own initiative where the HRC determines that

mediation might be productive, the HRC shall ascertain if all parties agree to attempt resolution through mediation. If all parties to the dispute or all parties concerned with a specific issue in the dispute agree to mediation, the HRC shall appoint a staff member to act as a neutral mediator and attempt to resolve the dispute through mediation.

J. Investigations

The HRC, in consultation with the Mayor's Office of Housing and Community Development, is authorized to take appropriate steps to enforce this Article and coordinate enforcement, including the investigation of any possible violations of this Article.

1. Length of Time of Investigation

Staff shall endeavor to complete the investigation within 30 days of the date of receipt of the housing provider's response. If the scope of the investigation and the availability of witnesses require a longer investigation, the HRC shall notify the parties. Any party may request to mediate upon the agreement of all parties.

2. Investigation Plan

Staff shall create a written investigation plan specifying the names of any witnesses to be interviewed, documents to request, and/or sites to be visited.

3. Witness Interviews

Staff shall create a mutually convenient schedule for interviewing witnesses. Interviews are informal in nature. HRC staff may also obtain information from witnesses by written interrogatories or other means of contact.

4. Document Review

HRC staff may require any person or company to produce relevant documents.

5. Subpoena Power

The HRC may subpoena any person or company to provide testimony or documents relevant to the case who fails or refuses to voluntarily cooperate with the investigation.

6. Consultation with MOHCD

HRC staff shall consult with the MOHCD at the outset of the investigation, prior to the conclusion of the investigation, and at any other stage during the investigation the HRC regards as necessary.

7. Conclusion of Investigation

HRC staff shall submit the conclusion of the investigation to the Director for action.

K. Determination

1. Director's Action

After reviewing the complete investigation file, the Director of the HRC shall do one of the following:

- a. Issue a determination that a violation has occurred. The determination shall consist of written findings, and where authorized by law, order any appropriate relief; or
- b. Return the file to the staff member with instructions for further investigation and analysis; or
- c. Decide that a determination of a violation is not in order and direct the staff member to administratively close the complaint.

2. Notification

The HRC shall serve copies of the Director's determination to all parties within 10 days of the Director's action.

XI. Appeal

Parties will have the right to appeal as provided in Article 49 of the Police Code. An appeal process will be set forth in a future version of the Rules.

If there is no appeal of the Director's determination of a violation, then that determination shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the housing provider against the City regarding the Director's determination of a violation.

XII. Severability

These rules shall be construed so as not to conflict with applicable local, state, or federal laws, rules or regulations. In the event that a court or an agency of competent jurisdiction holds that a local, state or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of these rules or the application thereof to any person or circumstances, it is the intent of the Commission that the court or agency sever such clause, sentence, paragraph or section so that the remainder of these rules shall remain in effect.

8.4 City of Richmond Rules of Procedure For Considering Arrests and Convictions in Affordable Housing Decisions

City of Richmond Rules of Procedure For Considering Arrests and Convictions in Affordable Housing Decisions

I. Introduction

After a public hearing, the City Council of the City of Richmond (hereinafter referred to as the “City Council”) found that the health, safety, and well-being of Richmond citizens depend on increasing access housing opportunities for people with arrest or conviction records. In response, the City Council Member voted 6-1 to pass the “Fair Chance Access to Affordable Housing Ordinance” in December of 2016.

The Fair Chance Access to Affordable Housing Ordinance (hereinafter referred to as the “Fair Chance Ordinance”) provides people with prior arrest and conviction records the opportunity to be considered for housing on an individual basis, thereby affording them with a fair chance to acquire housing, to effectively reintegrate into the community, and to provide for their families and themselves.

In considering the Fair Chance Ordinance, the City Council was made aware of the disproportionate arrest and incarceration of African Americans, Latinos, and Native Americans and the lifelong post-conviction stigma that follows individuals and compromises their ability to reintegrate into society. By reducing barriers, the Fair Chance Ordinance promotes public safety and reintegration.

The Fair Chance Ordinance was codified as Richmond Municipal Code Chapter 7.110.

II. Preemption and Scope of Authority

Richmond Municipal Code Section 7.110.070 (c) requires the City Manager of the City of Richmond (hereinafter referred to as the “City Manager”) to establish rules and regulations that implement the provisions of Chapter 7.110.

In developing these rules, the City Manager is guided by an understanding of the importance of fulfilling the goals of the Fair Chance Ordinance and has given weight to considerations of equity and practicality. These rules seek to provide clear direction to affordable housing providers and housing applicants and residents regarding the requirements of the Fair Chance Ordinance.

Nothing in these rules shall be interpreted or applied so as to create any requirements, power or duty in conflict with federal or state law or with a requirement of any government agency, including any agency of City government, implementing federal or state law. The City of Richmond (herein referred to as the “City”) is not authorized to enforce any provision of Fair Chance Ordinance upon determination that its application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

III. DEFINITIONS

The following definitions are derived directly from the definitions set forth in the Fair Chance Ordinance (Section 7.110.040 of the Richmond Municipal Code).

Adverse Action in the context of housing shall mean to evict from, fail or refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or to reduce any tenant subsidy. The “Adverse Action” must relate to real property in the City of Richmond.

Affordable Housing shall mean any residential building in the City, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing housing for extremely low income, very low income, and moderate income households.

Appeal shall mean an applicant’s challenge to a housing provider’s adverse action filed with the city of Richmond, within fourteen days of receipt of the notice of adverse action.

Applicant shall refer to the person or persons applying for affordable housing located in the City of Richmond.

Arrest shall mean a record from any jurisdiction that does not result in a conviction and

includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation, by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, or tried and acquitted for any felony, misdemeanor or other criminal offense.

Background Check Report shall mean any criminal history report, including but not limited to those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement or police agencies, or courts, or by any reporting agency or tenant screening agency.

City Manager shall mean the City Manager of the City of Richmond or said City Manager's designee.

Complaint shall mean a complaint filed with the City of Richmond alleging a violation of the ordinance. This includes challenges to adverse actions where the applicant has not filed an appeal within 14 days of the adverse action.

Conviction shall mean a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor; provided that the conviction is one for which the person has been placed on probation, fined, imprisoned, or paroled.

Conviction History shall mean information regarding one or more Convictions, transmitted orally or in writing or by another means, and obtained from any source, including but not limited to the individual to whom the information pertains and a Background Check Report.

Directly-Related Conviction in the housing context shall mean that the conduct for which a person was convicted that has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing, and includes one or more of the following: (1) any conviction where state or federal law prohibits the applicant from being eligible for the public housing; (2) any conviction for a crime carried out in the applicant's home or on the premises where the applicant lived; or (3) any conviction that leads to the applicant becoming a lifetime registered sex offender.

Evidence of Rehabilitation or Other Mitigating Factors may include but is not limited to: (1) a person's satisfactory compliance with all terms and conditions of parole and/or probation (however, inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with terms and conditions of parole and/or probation); (2) employer recommendations, especially concerning a person's post-conviction employment, educational attainment, vocation, or vocational or professional training since the conviction, including training received while incarcerated; (3) completion of or active participation in rehabilitative treatment (e.g., alcohol or drug treatment); (4) letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, or

parole/probation officers who have observed the person since his or her conviction; (5) age of the person at the time of the conviction. Successful completion of parole, mandatory supervision, or post release community supervision shall create a presumption of rehabilitation.

Housing provider shall mean any entity that owns, master leases, or develops Affordable Housing in the City. “Housing Provider” also includes any agent, such as a property management company, that makes tenancy decisions on behalf of the above described entities.

Inquire shall mean any direct or indirect conduct intended to gather information from or about an applicant, candidate, potential applicant or candidate, or employee using any mode of communication, including but not limited to application forms, interviews, and background check report.

Person shall mean any individual, person, firm, corporation, business or other organization or group of persons however organized.

IV. Procedures for the Advertisements, Applications, and Interviews

Nothing in the Fair Chance Ordinance affects additional appeals procedures or rights afforded to tenants and housing applicants elsewhere. In addition, nothing in the Fair Chance Ordinance mandates a conviction inquiry or background check. Affordable housing providers who do not inquire about an applicant’s conviction record or who do not perform background checks on applicants are in compliance with this Article. Affordable housing providers who choose to inquire about an applicant’s conviction history or who perform background checks must comply with the following procedures.

A. Advertisements and Solicitations

1. No Blanket Exclusions

Housing providers may not produce or disseminate any advertisement related to affordable housing that expresses, directly or indirectly, that any person with an arrest or conviction record will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by local, state, or federal law.

2. Applicants with Prior Arrest and Conviction Records will be Considered

Housing providers are required to state in all solicitations or advertisements for the rental or lease of affordable housing placed by the housing provider, or on behalf of the housing provider, that the housing provider will consider for tenancy qualified applicants with arrest or

conviction records in a manner consistent with the requirements of this Fair Chance Ordinance.

B. City Manager Notice and Posting Requirements

The City Manager is responsible for publishing and making available to affordable housing providers a notice suitable for posting that informs applicants of their rights under the Fair Chance Ordinance. The City Manager shall make this notice (“the notice”) available to housing providers in English, Spanish, and all other languages spoken by more than five percent (5%) of the City of Richmond population.

1. Website

Housing providers must prominently post on their website the notice in all of the languages referenced above.

2. Frequently Visited Locations

Housing providers must prominently post the notice in all of the languages referenced above at any location under their control that is frequently visited by applicants or potential applicants for the rental or lease of affordable housing in the City of Richmond. This includes, but is not limited to a housing provider’s lobby and rental office, the Richmond Housing Authority and the Housing Authority of the County of Contra Costa.

3. Language Access

In addition to making the notice available in English and Spanish, the City Manager shall update the notice on December 1 of any year in which there is a change in the languages spoken by more than five percent (5%) of the City of Richmond population.

C. Notice Requirement

1. Notice to Applicant Prior to Conducting Criminal Background Inquiry

In addition to posting the notice referenced in section IV. B.) prominently on their websites and in frequently visited locations, housing providers must individually provide each housing applicant a copy of the City Manager issued

notice prior to any inquiry regarding an applicant or household member's criminal history and a copy of the housing provider's admissions policy.

2. Language Access

If a housing applicant speaks Spanish or any other language spoken by more than five percent (5%) of the population of the City of Richmond, the housing provider must provide the applicant with the City Manager notice in his or her respective language.

V. Procedures for Decision Making

A. No Inquiry Prior to Determination of Qualification

The housing provider shall not require applicants, and individuals applying to be added to an existing lease, to disclose, and shall not inquire into, conviction history until the housing provider has first:

1. Determined that the applicant is qualified to rent the housing unit under all of the housing provider's criteria for assessing applicants except for criteria related to potential past criminal convictions; and
2. Provided to the applicant a conditional lease agreement that commits the unit to the applicant as long as the applicant passes the conviction history review.

B. Obtain but not Review

For the sake of efficiency, a housing provider may obtain a conviction history report at the same time the housing provider obtains the rental history report and credit history report for an applicant. However, a housing provider may not in any way look at or review the conviction history report until *after* determining that based on the rental history and credit history the applicant is qualified to rent the housing unit. Housing providers must employ practices and safeguards to ensure that conviction history information is not inadvertently viewed prior to a determination of qualification for a housing unit. It is a violation of the Fair Chance Ordinance if the records are viewed prior to a determination of qualification.

C. Consent to Obtain Criminal History

If and when the housing provider requests written consent from the applicant to obtain a background check record of conviction history, the housing provider must also request

consent to share the conviction history record with the applicant and with the City of Richmond (for the purposes of an appeal only), and must offer the applicant an opportunity to provide evidence of rehabilitation, inaccuracies, or other mitigating factors related to convictions within the previous two years.

D. Prohibited Inquiries and Considerations

1. Housing providers may not at any time or by any means inquire about, require disclosure of, or if such information is received, base an adverse action in whole or in part on any of the following:
 - (a) an arrest not leading to a conviction,
 - (b) participation in or completion of a diversion or a deferral of judgment program;
 - (c) a conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative, by way of example but not limitation, under California Penal Code Section 1203.1 or California Penal Code Section 1203.4.
 - (d) a conviction or any other determination or adjudication in the juvenile justice system or information regarding a matter considered in or processed through the juvenile justice system;
 - (e) a conviction that is more than 2 years old, the date of conviction being the date of sentencing; or
 - (f) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

Inquiring about or basing any adverse decision on any of the above 6 categories is a violation of the Fair Chance Ordinance. To ensure that none of this prohibited information is considered, affordable housing providers should explicitly exclude the above- information from any inquiry into conviction history. For example, if a criminal history questionnaire is required of an applicant, it should state that the above information should not be disclosed. In addition, commercial background check companies should be informed that the above information should not be included in any report.

Any affordable housing provider who decides to conduct a commercial background check should be aware that these reports can be inaccurate or incomplete. Upon receiving notice that information contained in the report falls into one of the prohibited 6 categories, the affordable housing provider should not consider or rely upon that criminal history information to take an adverse

action.

E. Consideration Limited to Directly-Related Convictions

1. Affordable housing providers may only consider directly-related convictions within the past 2 years for a housing decision.
2. In determining whether a criminal conviction is directly related, a housing provider should consider the nature and severity of the crime and the amount of time that has passed since the criminal conduct occurred as provided in criminal history information, and additional relevant information as provided in criminal history information.
3. If a housing provider determines that a conviction is not directly-related or that reasonable time has elapsed, no further action is required. If however, the housing provider intends to take adverse action based on a directly-related conviction within the past 2 years, the housing provider must comply with the rules set forth below.

F. Conduct an Individualized Assessment

1. In reviewing conviction history and making a decision related to affordable housing based on conviction history, a housing provider shall conduct an individualized assessment, considering only convictions that warrant denial based on state and federal law, and considering the time that has elapsed since the conviction, whether it is a directly-related conviction, and any evidence of inaccuracy or evidence of rehabilitation or other mitigating factors.
2. Inaccuracies of the item or items of conviction history. Examples of inaccuracies include but are not limited to:
 - (a) Mismatching of the subject of the report with another person;
 - (b) Revealing restricted information;
 - (c) Omitting information of how an arrest was resolved;
 - (d) Repeating the same information giving the appearance of multiple offenses; or
 - (e) Mischaracterizing the seriousness of the offense;
3. Evidence of other mitigating circumstances. Examples of mitigating factors that are offered voluntarily by the person may include but are not limited to:
 - (a) Explanation of the precedent coercive conditions;

(b) Intimate physical or emotional abuse; or

(c) Untreated substance abuse or a mental health disability that contributed to the conviction.

G. Written Notice and Copy of Report Prior to Prospective Adverse Action

1. If a housing provider intends to take an adverse action based on a directly-related conviction with the past 2 years, the housing provider must take the following steps:

2. Notify the applicant of the prospective adverse action, providing in written form the following:

(a) The type of housing sought;

(b) A copy of the background check;

(c) For each item of criminal history relied upon, why the housing provider believes it has a direct and specific negative bearing on the landlord's ability to fulfill his or her duty to protect the public and other tenants from foreseeable harm;

(d) What bearing, if any, the time that has elapsed since the applicant's or household member's last offense has on the housing provider's decision;

(e) What evidence the housing provider has received from the applicant or household member that shows rehabilitation or mitigation;

(f) The name and telephone number of the city staff member who the applicant may contact if he or she believes the housing provider has violated this Chapter.

H. Opportunity to Respond

Within fourteen (14) calendar days of receiving the notice and background check report, the applicant can file an appeal with the city of Richmond to challenge the adverse action. During this 14 day period, the housing provider shall hold the unit open. If the applicant does not file an appeal within 14 days, the housing provider can carry out the adverse action.

I. Delay Adverse Action

The housing provider shall delay any adverse action and shall hold the unit open during the time of the appeals process.

VI. Appeal Process

A. Filing of Appeal

1. An applicant can file an appeal of an adverse action no more than fourteen days after receipt of the notice of such action. The appeal must be filed with the City of Richmond.
2. An appeal may be made in writing, or if made orally, shall be put in writing by a City Manager staff person. Appellants are encouraged to utilize the City of Richmond Fair Chance Appeal/Complaint form. City staff shall take the appropriate steps necessary to ensure full access to the appeal process for persons with disabilities and people with limited English proficiency. City staff will also provide the appellant with the contract information for Bay Area Legal Aid and the website address: lawhelpca.org. The appeal shall contain the following information:
 - (a) The complete name and contact information of the person filing the appeal.
 - (b) A plain and concise statement of facts, which provide the basis of the appeal, including:
 - (i) The specific date(s), action(s), practice(s) or incident(s) alleged to violate the Fair Chance Ordinance;
 - (ii) The signature of the person making the appeal verifying under penalty of perjury that the response is true and complete to the best of the signatory's knowledge and belief.

B. Notice of Appeal

City staff shall notify the housing provider that an appeal has been filed and that they must hold the unit until the appeal process has been completed. This notification should be done as soon as possible but no more than three days after receipt of the complaint.

C. Setting Appeal Hearing

The appeal hearing shall occur no later than seven days from receipt of the appeal. Notice of the appeal hearing shall be sent to the parties by first class mail as soon as possible, but no later than three days prior to the hearing.

D. Hearing Officer

The appeal shall be heard by a hearing officer appointed by the City Manager to hear administrative appeals. The hearing officer may be a City employee, but in that event, the hearing officer shall not have had any responsibility for the investigation, prosecution or enforcement of the Fair Chance Ordinance and shall not have had any personal involvement in the appeal to be heard within the past twelve months.

E. Delay for Good Cause

The hearing officer may delay the hearing no longer than (7) seven days for good cause including: giving either party time in which to retain counsel, as an accommodation for a person with disabilities, or an unavoidable conflict which seriously affects the health, safety or welfare of the party.

F. Hearing

Both parties shall have the right to have an advocate of their choosing to represent them at the hearing and may present any relevant witnesses and evidence. Evidence will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding. Both parties shall be allowed to examine the other party's evidence and to rebut and cross-examine witnesses. Both parties shall also have the opportunity to request a translator and to request any reasonable accommodation needed to participate in the hearing process. The hearing shall be audio recorded. The audio recording shall be made available to the complainant and housing provider at no cost.

G. Contents of Hearing Officer's Decision

The hearing officer shall issue a written decision containing findings of fact and a determination of the issues presented. The hearing officer may affirm, modify or reverse the notice of adverse action. If it is shown by a preponderance of all the evidence that the housing provider has violated the Fair Chance Ordinance, the hearing office shall also specify the appropriate penalties and relief that shall be imposed.

H. Timing and Service of Hearing Officer's Decision

The hearing officer shall issue a decision, no later than three days from the date of the hearing. Upon issuance of the hearing officer's decision, the City shall serve a copy on the parties by first class mail to the address provided by the appellant in the written notice of appeal.

I. Finality of Hearing Officer's Decision

The decision of the hearing officer on an appeal shall constitute the final administrative decision of the City and shall not be appealable to the City Council or any committee or commission of the City.

J. Failure to Obey Order

If, after any order of a hearing officer made pursuant to this Rule has become final, the person to whom such order was directed shall fail, neglect or refuse to obey such order, the City is authorized and directed to take whatever legal action is deemed necessary to remedy the failure to obey the order.

K. Failure to File Appeal

An applicant is not required to exhaust administrative remedies in order to bring a civil action against the housing provider for failure to comply with the Fair Chance ordinance.

VII. Filing a Complaint with the City of Richmond

A. Who May Report

An applicant or any other person may report to the City Manager any suspected violation of this Fair Chance Ordinance.

B. City Manager-Initiated Investigations and Complaints

The City Manager may, in the City Manager's sole discretion, investigate possible violations of the Fair Chance Ordinance on the City Manager's own initiative and shall

adjudicate them pursuant to the complaint process. City manager initiated complaints shall not be subject to the time limitation laid out in section (V)(C).

C. Timing of Complaint

A suspected violation of the Fair Chance Ordinance may be reported within one hundred and twenty days (120 days of the date that the suspected violation occurred, or that the complainant became aware that the action violating this ordinance occurred.)

D. Elements of a Complaint

A complaint may be made in writing, or if made orally, shall be put in writing by a City Manager staff person. Applicants are encouraged to utilize the City of Richmond Fair Chance Complaint form. City staff shall take the appropriate steps necessary to ensure full access to the complaint process for persons with disabilities and people with limited English proficiency. City staff will also provide the appellant with the contract information for Bay Area Legal Aid and the website address: lawhelpca.org. The complaint shall contain the following:

1. The complete name and contact information of the person making the complaint, unless the person making the complaint wishes to remain anonymous;
2. A plain and concise statement of facts, which provide the basis of the complaint, including
3. The specific date(s), action(s), practice(s) or incident(s) alleged to violate the Fair Chance Ordinance;
4. The signature of the person making the complaint verifying under penalty of perjury that the response is true and complete to the best of the signatory's knowledge and belief.
In cases in which the complainant wishes to remain anonymous or in City Manager initiated complaints, a verification of the complaint by a City Manager staff person;
5. Possible violations of the Fair Chance Ordinance include, but are not limited to the following examples:

- (a) An advertisement for affordable housing that does not state that the provider will consider qualified applicants with criminal histories;
- (b) An advertisement for affordable housing that expresses directly or indirectly that a person with an arrest or conviction record will not be considered;
- (c) An application for affordable housing that contains an inquiry about a prior arrest or conviction record;
- (d) A housing provider who inquires about an applicant's conviction background prior to determining eligibility for housing;
- (e) A housing provider who reviews an applicant's conviction report prior to determining eligibility for housing;
- (f) A housing provider who inquires about an applicant's conviction background prior to providing applicant the City Manager notice informing them of their rights under the Fair Chance Ordinance;
- (g) A housing provider who does not post the City Manager notice on its website;
- (h) A housing provider who does not post the City Manager notice in locations frequented by tenants or housing applicants;
- (i) A housing provider who does not provide the City Manager notice in the languages mandated by these rules;
- (j) A housing provider who inquires about or considers one of the six off-limits categories, enumerated in Section V.A. of these Rules;
- (k) A housing provider who does not give an applicant a copy of the conviction history report prior to taking a prospective adverse action;
- (l) A housing provider who does not specify which conviction is the basis for the adverse action;
- (m) A housing provider who does not give an applicant notice of their right to provide evidence of inaccuracies and evidence of rehabilitation or mitigating circumstances;
- (n) A housing provider who does not offer the applicant 14 days to provide evidence of inaccuracies and evidence of rehabilitation or mitigating circumstances;
- (o) A housing provider who fails to conduct an individualized assessment.

- (p) The City may not find a violation based on a housing provider's decision that an applicant's conviction within the past 2 years is directly-related, but may find a violation of the Fair Chance Ordinance if the housing provider failed to take the steps to conduct the individualized assessment, which requires determining whether a conviction is directly-related, considering the time elapsed, and reviewing and considering evidence presented by the applicant;
- (q) A housing provider who does not delay the adverse action until they have reconsidered the decision in light of evidence provided by the applicant;
- (r) A housing provider who does not provide notice of a final adverse action to the applicant;
- (s) A housing provider who retaliates against someone for exercising his or her rights under this ordinance;
- (t) A housing provider who fails to maintain and retain records as required by the Fair Chance Ordinance.

E. Setting of Complaint Hearing

The appeal hearing shall occur no later than thirty days from the date of the complaint. Notice of the complaint hearing shall be sent to the parties by first class mail as soon as possible, but no later than seven days prior to the hearing.

F. Hearing Officer

The complaint hearing shall be heard by a hearing officer appointed by the City Manager to hear administrative appeals. The hearing officer may be a City employee, but in that event, the hearing officer shall not have had any responsibility for the investigation, prosecution or enforcement of the Fair Chance Ordinance and shall not have had any personal involvement in the complaint to be heard within the past twelve months.

G. Delay for Good Cause

The hearing officer may delay the hearing no longer than (7) seven days for good cause including: giving either party time in which to retain counsel, as an accommodation for a person with disabilities, or an unavoidable conflict which seriously affects the health, safety or welfare of the party.

H. Hearing

Both parties shall have the right to have an advocate of their choosing to represent them

at the hearing and may present any relevant witnesses and evidence. Evidence will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding. Both parties shall be allowed to examine the other party's evidence and to rebut and cross-examine witnesses. Both parties shall also have the opportunity to request a translator and to request any reasonable accommodation needed to participate in the hearing process. The hearing shall be audio recorded. The audio recording shall be made available to the complainant and housing provider at no cost.

I. Contents of Hearing Officer's Decision

The hearing officer shall issue a written decision containing findings of fact and a determination of the issues presented. If it is shown by a preponderance of all the evidence that the housing provider has violated the Fair Chance Ordinance, the hearing office shall also specify the appropriate penalties and relief that shall be imposed.

J. Timing and Service of Hearing Officer's Decision

The hearing officer shall issue a decision, no later than fifteen days from the date of the hearing. Upon issuance of the hearing officer's decision, the City shall serve a copy on the parties by first class mail within five days.

K. Finality of Hearing Officer's Decision

The decision of the hearing officer on complaint shall constitute the final administrative decision of the City and shall not be appealable to the City Council or any committee or commission of the City.

L. Failure to Obey Order

If, after any order of a hearing officer made pursuant to this Rule has become final, the person to whom such order was directed shall fail, neglect or refuse to obey such order, the City is authorized and directed to take whatever legal action is deemed necessary to remedy the failure to obey the order.

M. Failure to File a Complaint

An applicant is not required to exhaust administrative remedies in order to bring a civil action against the housing provider for failure to comply with the Fair Chance Ordinance.

N. Confidentiality

The City Manager shall encourage reporting of violations by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the applicant or other person reporting the violation, unless such a person authorizes the City Manager to disclose his or her name and identifying information as

necessary to enforce the Fair Chance Ordinance or for other appropriate purposes.

VIII. Retaliation

A. Rehabilitation Prohibited

Neither housing providers nor any other person may interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the Fair Chance Ordinance. This includes interrupting, terminating or failing or refusing to initiate or conduct a transaction involving the rental or lease of residential real property, including falsely representing that a residential unit is not available for rental or lease. This also includes taking adverse action against a person or family member in retaliation for exercising rights protected under the Fair Chance Ordinance. These protections apply to any person who mistakenly, but in good faith, alleges violation of the Fair Chance Ordinance. Examples of what may constitute adverse action are defined above.

B. Protected Exercise of Right under this Article

The following activities include, but are not limited to, the protected exercise of rights under the Fair Chance Ordinance: (1) the right to file a complaint; (2) the right to inform any person about a housing provider's alleged violation of the Article; (3) the right to cooperate with the City Manager or other persons in the investigation or prosecution of any alleged violations of the Fair Chance Ordinance; (4) the right to oppose any policy, practice or act that is unlawful under the Fair Chance Ordinance; and (5) the right to inform any person of his or her rights under the Fair Chance Ordinance.

C. 90-Day Presumption

Taking adverse action against a person within 90 days of the exercise of one or more of the rights described above shall create a rebuttable presumption that such adverse action was taken in retaliation for the exercise of the rights set forth above.

IX. Enforcement

Warning, Notice to Correct, and Technical Assistance

A. First Violation

For a first violation, the City Manager must issue a warning and notice to correct and offer the housing provider technical assistance on how to comply with the requirements of these Rules.

B. Second Violation

For a second violation, the City Manager may impose an administrative penalty of no more than \$250.00 that the housing provider must pay for each applicant whose rights were violated or continue to be violated.

C. Third Violation

For a third violation, the City Manager may impose an administrative penalty of no more than \$500.00 that the housing provider must pay for each applicant whose rights were violated or continue to be violated.

Subsequent Violations

For subsequent violations, the City Manager may increase the penalty up to \$1000.00.

D. Multiple Applicants Impacted by Same Violation

If multiple applicants are impacted by the same procedural violation at the same time (e.g. all applicants for a certain housing unit are asked for their conviction history on the initial application) the violation shall be treated as a single violation rather than multiple violations.

E. Allocation of Penalties

The penalties are payable to the City for each applicant whose rights were, or continue to be, violated.

X. Civil Action

A. Any person, including the City of Richmond, may enforce the provisions of this ordinance by means of a civil action.

B. Injunction. Any person or entity that commits an act, proposes to commit an act, or engages in any pattern and practice which violates this ordinance may be enjoined by any court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represents the interest of the protected class.

C. Damages. Any person or entity who violates or aids or incites another person to violate the provisions of this ordinance is liable for the general and special damages suffered by any aggrieved party or for statutory damages pursuant to section (include cite), whichever is greater, and shall be liable for such attorneys' fees and costs as may be determined by the court in addition thereto.

- D. Nonexclusive Remedies and Penalties. The remedies provided in this Chapter are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.
- E. A complaint to City of Richmond for a violation of this ordinance is not a prerequisite to the filing of a civil action or to seeking injunctive relief pursuant to this section. The pendency of a complaint will not bar any civil action, but a final judgment in any civil action involving the same parties and claims shall bar any further proceedings by the City of Richmond.
- F. If either party retains a private attorney to pursue litigation pursuant to this provision, the party shall provide notice to the City and the Appeal Hearing Officer within ten (10) calendar days of filing court action against the housing provider, and inform the City and the Appeal Hearing Officer of the outcome of the court action within ten (10) calendar days of any final judgment.

XI. Severability

These rules shall be construed so as not to conflict with applicable local, state, or federal laws, rules or regulations. In the event that a court or an agency of competent jurisdiction holds that a local, state or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of these rules or the application thereof to any person or circumstances, it is the intent of the Commission that the court or agency sever such clause, sentence, paragraph or section so that the remainder of these rules shall remain in effect.

8.5 Cook County Just Housing Amendment Interpretive Rules

PART 700 JUST HOUSING AMENDMENT INTERPRETIVE RULES

Section 700.100 Prohibition of Discrimination

Article II of the Cook County Human Rights Ordinance (“Ordinance”) prohibits unlawful discrimination, as defined in §42-31, against a person because of any of the following: race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge, source of income, gender identity or housing status.

Additionally, any written or unwritten housing policy or practice that discriminates against applicants based on their criminal history, as defined in § 42-38(a) of the Ordinance, is a violation of the Ordinance. Any written or unwritten housing policy or practice which discriminates against applicants based on their convictions, as defined in § 42-38(a) of the Ordinance, prior to the completion of an individualized assessment violates the Ordinance.

Nothing in this section shall be interpreted as prohibiting a housing provider from denying housing to an applicant based on their criminal conviction history when required by federal or state law.

SUBPART 710 AUTHORITY AND APPLICABILITY

Section 710.100 Authority

These rules are adopted in accordance with the authority vested in the Cook County Commission on Human Rights (“Commission”), pursuant to § 42-34(e)(5) and §42-38(c)(5)(c) of the Ordinance, to adopt rules and regulations necessary to implement the Commission’s powers.

Section 710.110 Applicability

These rules shall go into effect on the effective date of the Just Housing Amendment (No. 19-2394) to the Ordinance and shall only apply to claims that arise out of actions that occur on or after the effective date of the amendments.

SUBPART 720 DEFINITIONS

Section 720.100 Business Day

“Business Day” means any day except any Saturday, Sunday, or any day which is a federal or State of Illinois legal holiday.

Section 720.110 Criminal Background Check

“Criminal background check,” as referenced in § 42-38(e)(2)(a), includes any report containing information about an individual’s criminal background, including but not limited to those produced by federal, state, and local law enforcement agencies, federal and state courts or consumer reporting agencies.

Section 720.120 Demonstrable Risk

“Demonstrable risk,” as referenced in § 42-38(c)(5)(c), refers to the likelihood of harm to other residents’ personal safety and/or likelihood of serious damage to property. When the applicant is a person with a disability, “demonstrable risk” must be based on (a) objective evidence and (b) a conclusion that any purported risk cannot be reduced or eliminated by a reasonable accommodation.

Section 720.130 Individualized Assessment

“Individualized Assessment,” as referenced in § 42-38(a) means a process by which a person considers all factors relevant to an individual’s conviction history from the previous three (3) years. An individualized assessment is not required for convictions that are more than three (3) years old. Factors that may be considered in performing the Individualized Assessment include, but are not limited to:

- (1) The nature and severity of the criminal offense and how recently it occurred;
- (2) The nature of the sentencing;
- (3) The number of the applicant's criminal convictions;
- (4) The length of time that has passed since the applicant's most recent conviction;
- (5) The age of the individual at the time the criminal offense occurred;
- (6) Evidence of rehabilitation;
- (7) The individual history as a tenant before and/or after the conviction;
- (8) Whether the criminal conviction(s) was related to or a product of the applicant's disability; and
- (9) If the applicant is a person with a disability, whether any reasonable accommodation could be provided to ameliorate any purported demonstrable risk.

Section 720.140 **Relevance**

"Relevance," as referenced in § 42-38(e)(2), refers to the degree to which an individual's conviction history makes it likely that the applicant poses a demonstrable risk to the personal safety and/or property of others.

Section 720.150 **Tenant Selection Criteria**

"Tenant selection criteria," as referenced in § 42-38(e)(2)(a), means the criteria, standards and/or policies used to evaluate whether an applicant qualifies for admission to occupancy or continued residency. The criteria, standards and/or policies concerning the applicant's conviction history from the previous three (3) years shall apply only after a housing applicant has been pre-qualified. The criteria must explain how applicants' criminal conviction history from the previous three (3) years will be evaluated to determine whether their conviction history poses a demonstrable risk to personal safety or property.

SUBPART 730 **TWO STEP TENANT SCREENING PROCESS**

Section 730.100 **Notice of Tenant Selection Criteria and Screening Process**

Before accepting an application fee, a housing provider must disclose to the applicant the following information:

- (A) The tenant selection criteria, which describes how an applicant will be evaluated to determine whether to rent or lease to the applicant;
- (B) The applicant's right to provide evidence demonstrating inaccuracies within the applicant's conviction history, or evidence of rehabilitation and other mitigating factors as described in §740.100(B) below; and
- (C) A copy of Part 700 of the Commission's procedural rules or a link to the Commission's website, with the address and phone number of the Commission.

Section 730.110 **Step One: Pre-Qualification**

No person shall inquire about, consider or require disclosure of criminal conviction history before the prequalification process is complete, and the housing provider has determined the applicant has satisfied all other application criteria for housing or continued occupancy.

Section 730.120 **Notice of Pre-Qualification**

Once a housing provider determines an applicant has satisfied the pre-qualification standards for housing, the housing provider shall notify the applicant that the first step of the screening procedure has been satisfied and that a criminal background check will be performed or solicited.

Section 730.130 **Step Two: Criminal Background Check**

After a housing provider sends the notice of pre-qualification required by Section 730.120, a housing provider may conduct a criminal background check on the prequalified applicant. However, the housing provider may not consider any information related to the criminal convictions that are more than three (3) years old or any covered criminal history as defined in Section 42-38(a) of the Ordinance.

SUBPART 740 **CONVICTION DISPUTE PROCEDURES**

Section 740.100 **Notice**

Within five days of obtaining a background check on an applicant, the housing provider must deliver a copy of the background check to the applicant. The housing provider must complete delivery in one of the following ways: (1) in person, (2) by certified mail, or (3) by electronic communication (e.g., text, email).

Section 740.110 **Opportunity to Dispute the Accuracy and Relevance of Convictions**

Once a housing provider complies with the requirements of Section 740.100, the applicant shall have an additional five (5) business days to produce evidence that disputes the accuracy or relevance of information related to any criminal convictions from the last three (3) years.

Section 740.120 **Dispute Procedures and Other Applicants**

Nothing in these rules shall prevent a housing provider from approving another pre-qualified individual's housing application during the pendency of the criminal conviction dispute process.

SUBPART 750 **REVIEW PROCESS**

750.100 **General**

After giving an applicant the opportunity to dispute the accuracy and/or relevance of a conviction, a housing provider shall conduct an individualized assessment, in accordance with Sections 720.120 through 720.140. of these rules, to determine whether the individual poses a demonstrable risk. If the applicant poses a demonstrable risk, the housing provider may deny the individual housing.

Section 750.110 **Exceptions**

A housing provider must perform an individualized assessment prior to denying an individual housing based on criminal conviction history, except in the following circumstances:

- (A) A current sex offender registration requirement pursuant to the Sex Offender Registration Act (or similar law in another jurisdiction); and/or
- (B) A current child sex offender residency restriction.

Section 750.120 **Prohibited Factors**

Any person conducting an individualized assessment, as defined in Section 720.130 of these rules, is prohibited from basing any adverse housing decision, in whole or in part, upon a conviction that occurred more than (3) years from the date of the housing application.

SUBPART 760 NOTICE OF FINAL DECISION

Section 760.100 Decision Deadline

A housing provider must either approve or deny an individual's housing application within three (3) business days of receipt of information from the applicant disputing or rebutting the information contained in the criminal background check.

Section 760.110 Written Notice of Denial

- (A) Any denial of admission or continued occupancy based on a conviction must be in writing and must provide the applicant an explanation of why denial based on criminal conviction is necessary to protect against a demonstrable risk of harm to personal safety and/or property.
- (B) The written denial must also contain a statement informing the housing applicant of their right to file a complaint with the Commission.

Section 760.120 Confidentiality

The housing provider must limit the use and distribution of information obtained in performing the applicant's criminal background check. The housing provider must keep any information gathered confidential and in keeping with the requirements of the Ordinance.

SUBPART 770 EVALUATION

Section 770.100 Evaluation and Report

The Commission on Human Rights shall conduct an evaluation of the rules implementing the Just Housing Amendment to the Cook County Human Rights Ordinance to determine whether the rules should be amended to better effectuate the Amendment's purpose. The evaluation shall include an analysis of whether applicants who receive a positive individualized assessment from housing providers are ultimately admitted into the unit that they applied for. This analysis will inform the Commission on Human Rights on whether it needs to modify the rules to re-instate a requirement that housing providers hold the unit open during the individualized assessment process. In addition, the evaluation should include data about complaints brought under the Just Housing Amendment. The evaluation shall be completed and made publicly available by March 31, 2021.

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