



Office of the Mayor

ACTION CALENDAR

March 10, 2020

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguin, Councilmembers Cheryl Davila, Kate Harrison, Ben Bartlett

Subject: Ronald V. Dellums Fair Chance Access to Housing Ordinance; Adding BMC Chapter 13.106

RECOMMENDATION

1. Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing Ordinance, adding Berkeley Municipal Code Chapter 13.106 and;
2. Direct the City Manager to take all necessary steps to implement this chapter including but not limited to developing administrative regulations in consultation with all relevant City Departments including the Rent Stabilization Board, preparing an annual implementation budget, designating hearing officers and other necessary staffing for administrative complaint, exploring the development of a compliance testing program similar to that used by the Seattle Office of Civil Rights, developing timelines and procedures for complaints, conducting outreach and education in partnership with the Alameda County Fair Chance Housing Coalition, and referring program costs to the June budget process.

POLICY COMMITTEE RECOMMENDATION

On November 7, 2019, the Land Use, Housing, and Economic Development Committee adopted the following action: M/S/C (Droste/Hahn) to move the item with amendments and subject to additional technical revisions with a positive recommendation. Vote: All Ayes.

BACKGROUND

The City of Berkeley, along with other California urban areas, has seen an unprecedented increase in homelessness, with dire public health and safety consequences. This proposed Fair Chance Housing Ordinance serves as critical strategy to house currently unhoused people and also prevent more people from becoming homeless.

Structural barriers faced by formerly incarcerated people continue to exist, with the persistent use of criminal records blocking housing opportunities for many. A lack of access to stable housing increases the risk of recidivism, furthering the cycle caused by an inequitable criminal justice system. A 2019 survey by UC Berkeley's Goldman

School for Public Policy found that a third of formerly incarcerated Alameda County residents had experienced homelessness or housing insecurity, and 54% had been denied either housing or the opportunity to live with a family member because of their criminal record.

Multiple jurisdictions across the country, including regional neighbors such as Oakland, San Francisco and Richmond, have passed a Fair Chance Housing Ordinance, which prohibits landlords from prohibiting tenancy based on an individual's criminal history. The Berkeley Housing Element calls for the creation and enforcement of fair housing laws.

In October 2018, the City Council unanimously approved a referral to the City Manager and the 4x4 Committee to establish a Fair Chance Housing Ordinance. The 4x4 Committee discussed this during their meetings in May and June 2019, in consultation with the Alameda County Fair Chance Housing Coalition led by the Just Cities/ Dellums Institute for Social Justice, and various stakeholders.

The Fair Chance Ordinance was moved to the Land Use, Housing and Economic Committee where it was first discussed on July 18, 2019. The ordinance was discussed in depth over the course of five committee meetings. Several key amendments were accepted by the author and advocates based on input from property owners. These noted "exemptions" in the summary section on page four were the result of concerns raised about: (1) small Housing Providers not having access to information and/or the capacity to implement many changes into their existing systems; and (2) owner occupied Housing Providers having special considerations.

On November 7, 2019 the committee took the following action:

M/S/C (Droste/Hahn) to move the item with amendments and subject to additional technical revisions with a positive recommendation. Vote: All Ayes.

The final Committee amendments:

- Clarified definitions of "Adverse Action", "Aggrieved Person", "Close Family Member" and "Housing".
- Refined the terms of the exemptions for use of Background Check Reports
- Requested that the City Attorney make technical revisions to ensure appropriate formatting and define the locations where Housing Providers must post notices required under the Ordinance.

Subsequent to the Committee's action, the Mayor reviewed the ordinance to ensure that the language was clear and also compared our ordinance to the recently adopted Oakland Fair Chance Ordinance and has proposed new clarifying changes.

SUMMARY

As research and lived experience demonstrate, formerly incarcerated people experience significant barriers beyond the high cost of rent that prevent them from securing housing. They are screened out when applying to rent housing due to criminal background checks in private rental, nonprofit affordable housing, and public housing units. Even living with family members is not always a viable solution as it may put their family's housing at risk-- rental agreements may prohibit or limit people with criminal histories from residing in the units. Fair Chance Housing is legislation that prohibits the use of criminal histories for most offenses in determining access to housing. It also bans the use of advertising language that excludes people with arrest records, conviction records, or criminal history. In short, Fair Chance Housing legislation removes structural barriers to housing and enables landlords to consider the merits of individual housing applications—providing people with a fair chance.

Led by Just Cities/the Dellums Institute for Social Justice, The Alameda County Fair Chance Housing Coalition has been working to remove such structural exclusionary barriers for people coming home from prison. The purposes of the Fair Chance Housing Ordinance are to: (1) increase access to housing for formerly incarcerated individuals and their family members; (2) reduce the homelessness and family separation that result from blanket exclusion of housing applicants based solely on criminal background checks; (3) reduce recidivism by removing structural barriers to stable housing; (4) provide formerly incarcerated people with a fair opportunity to reclaim their lives and effectively reintegrate into the Berkeley community; and (5) maintain existing safeguards for owners.

The table below summarizes the main policy terms organized by the type of housing provider.

| Housing Provider | Criminal Background Check | Due Process | Reporting to City | Potential Remedies for Violations |
|---|--|--------------------------------|------------------------------------|---|
| Private (Non-Affordable Housing Provider) | No | City Complaint or Sue in Court | None | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| Publicly Subsidized & Not HUD Funded | No | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| HUD Funded | Following due process protections, can check on 2 crimes per HUD rules | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |

ORDINANCE PROHIBITIONS:

The proposed ordinance prohibits ALL landlords from:

- (a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,
- (b) Asking about or requiring disclosure of someone's criminal history, or
- (c) Taking adverse action against an applicant or tenant based on his or her criminal history.

EXEMPTIONS:

- The following properties where the owner occupies the property are exempt from the ordinance: permitted ADUs, single family homes, duplexes, and triplexes.
- Property owners renting their primary dwelling when they are on sabbatical.
- Tenants renting out available bedrooms in the unit in which they reside.
- Pursuant to State law, landlords can review and consider whether an applicant is on the State operated registry of lifetime sex offenders in order to protect the safety of at risk people. This review should happen after a conditional offer has been made and upon receipt of written consent of the applicant. If a housing denial is based upon the registry information, the landlord must provide that information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.
- Landlords of HUD funded housing have a partial exemption from the ordinance if they are complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history (lifetime sex offender registration requirement or making meth on a federally assisted housing property). However, the landlord should follow due process protections including obtaining written consent from the applicant. The landlord must also provide the background check information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.

CURRENT SITUATION AND ITS EFFECTS

Information below is based upon research conducted by the Just Cities Team, former senior government officials and academic researchers. The Just Cities Policy Justice Memo is included in Attachment 2.

SUMMARY OF FLAWS WITH CRIMINAL BACKGROUND DATABASE SYSTEMS

Research shows that government repositories of criminal records are routinely incomplete, thus making commercial criminal background reports inaccurate and/or misleading. In 2006, the U.S. Department of Justice (DOJ) found that an estimated 50% of FBI arrest records, which are used by many background check companies, were missing information on the final disposition of the cases in question.¹ In 2016, the DOJ found that an estimated 32% of records in state criminal history repositories were missing final disposition data.² Incomplete data at the state and federal levels undermine the fairness and accuracy of commercial criminal background reports, which rely upon governmental data. In particular, out-of-date information about the final disposition of a case means that data about arrests are routinely listed in background reports even when the charges were eventually dropped, reduced, or disproven in court.

The consequences of these database gaps are significant. According to the National Employment Law Project (NELP), “one third of felony arrests do not result in conviction and many others are reduced to misdemeanors.”³ While industry-wide data on the inaccuracies of commercial criminal background reports are unavailable, the NELP estimates that 1.8 million workers are subject to FBI checks that include faulty or incomplete information each year. Further, many on-line databases accessible through search engines are also inaccurate, even representing persons without criminal records as having been arrested or convicted.

The lack of accurate disposition data is one of many issues that undermine the accuracy of private criminal background reports. According to a review by the National Consumer Law Center, such reports suffer from a range of problems, including: the publication of sealed or expunged records; the misclassification of crimes (e.g. reporting a misdemeanor as a felony); the assignment of crimes to an individual who did not commit them, otherwise known as a “false positive”; and the display of data in a misleading manner (e.g. reporting a single arrest multiple times because it appears in

¹ U.S. Department of Justice. (2006). [*The Attorney General's Report on Criminal History Background Checks*](#), p. 3.

² National Consortium of Justice Statistics. (2018). [*Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*](#), p. 2.

³ National Employment Law Project. (2013). [*Wanted: Accurate FBI Background Checks for Employment*](#), pp. 1-2.

multiple databases).⁴ Unlike government screens, such commercial background checks are conducted using basic personal information, like names. In the late 1990s, a task force consisting of state and federal agencies found that, compared with fingerprint-based checks, name-based checks resulted in a false-positive rate of 5.5%.⁵ This means that around 1 in 20 apparent identifications of a crime was ascribed to a person who did not in fact commit that crime.

SUMMARY OF HOUSING ACCESS BARRIERS FOR PEOPLE WITH CRIMINAL RECORDS

Alameda County service providers and national researchers have documented barriers to access to both private rental and publicly subsidized affordable housing faced by formerly incarcerated residents.⁶ Results of a 2019 Goldman School survey and interviews of formerly incarcerated persons in Alameda County found that many formerly incarcerated persons could not stay in public housing with a relative or family member due to public housing rules or were denied private or public rental housing due to their incarceration record.⁷ In addition, a recent survey by the Berkeley Property Owners Association found that the majority of landlord survey respondents conducted criminal background checks. We note that persons paroled from incarceration are generally required to be returned to the county of their residence (CA Penal Code 3003); therefore, parolees from this area will be returning home.

SUMMARY OF PUBLIC HEALTH & SAFETY IMPACTS FROM HOUSING BARRIERS:

As the state with the second highest population of people currently in prison or jail in the country,⁸ California will need to house formerly incarcerated people as they reenter society in a highly impacted housing market. Alameda County has a total of 7,900 people on probation or parole.⁹ Incarceration and lack of housing can lead to severely

⁴ National Consumer Law Center. (2012). *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, p. 15.

⁵ National Association of Professional Background Screeners. (2005). *The National Crime Information Center: A Review and Evaluation*, pp. 11-2.

⁶ See Corinne Carey, No Second Chance: People with Criminal Records Denied Access to Public Housing, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, Taking Stock: Housing, Homelessness and Prisoner Re-Entry (2004); and Every Door Closed: Barriers Facing Parents With Criminal Records, CLASP and CLS Report, Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”.

⁷ Rodriguez, Anthony (2019) “A Just Return Home: Identifying and Removing Barriers to Housing for Formerly Incarcerated Residents Through Suggested Policies for County of Alameda” Report for Just Cities and Goldman School of Public Policy. p.23

⁸ California 2017 raw numbers. “State-by-State Data.” The Sentencing Project. Accessed October 4, 2019. <https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.Total&state2Option=0>

⁹ Total population in probation, Q4 2018 “Alameda County Probation Department Data Dashboard”. Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

limited economic opportunity, thereby increasing the chances of recidivism and public safety impacts.

Research has shown that access to stable and affordable housing enables people to successfully re-integrate into society. For example, a study in Maryland¹⁰ found that providing supportive housing to recently released incarcerated persons reduced the chances that they would be rearrested in the first year. A government study conducted in the United Kingdom found that stable housing was associated with a 20% reduction in the chance of being reconvicted.¹¹

Extensive research also shows the direct link between incarceration history, homelessness, and health.¹² For example, a recent participatory action research project between Just Cities, The Village, and the UC Berkeley Goldman School for Public Policy's Center for Civility & Democratic Engagement found that 73% of unhoused residents interviewed in Oakland's encampments were formerly incarcerated.¹³ Based upon anecdotal and other data, we believe that unhoused people in Berkeley are also disproportionately formerly incarcerated. For example, in the 2017 Point in Time count for Berkeley homeless residents, one of the top six reasons listed for the primary cause of homelessness was incarceration (6% of respondents). In addition, there are an estimated 10 million children nationwide that are impacted by a parent or close relative who are in the criminal justice system.¹⁴ These children suffer from an increased rate of depression, antisocial behavior, drug use, and suicide.¹⁵

¹⁰ Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

¹¹ Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." *Journal of Experimental Criminology* 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

¹² Roman, Caterina Gouvis, and Jeremy Travis. "Taking Stock: Housing, Homelessness, and Prisoner Reentry." PsycEXTRA Dataset, 2004. http://webarchive.urban.org/UploadedPDF/411096_taking_stock.pdf p.7-8

¹³ Tsai, Tim. "Standing Together: A Prevention-Oriented Approach to Ending Homelessness in Oakland." <http://bit.ly/HomelessPrevention2019> p.12

¹⁴ Hirsch, Amy E, Sharon M Dietrich, Rue Landau, Peter D Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. *Every Door Closed: Barriers Facing Parents with Criminal Records*. Philadelphia, PA: Community Legal Services, Inc, 2002. p.1

https://www.clasp.org/sites/default/files/publications/2018/01/every_door_closed.pdf

¹⁵ Davis, Laurel, and Rebecca J. Shlafer. "Mental Health of Adolescents with Currently and Formerly Incarcerated Parents." *Journal of Adolescence* 54 (2017): 120–34. <https://doi.org/10.1016/j.adolescence.2016.10.006>.

Shlafer, Rebecca J, Erica Gerrity, Ebony Ruhland, and Marc Wheeler. "Children with Incarcerated Parents – Considering Children's Outcomes in the Context of Complex Family Experiences." *Children, Youth, and Family Consortium*, 2013. <https://www.prisonpolicy.org/scans/umn/June2013ereview.pdf>. p.3

SUMMARY OF RACIAL DISPARITY:

There is an extreme racial disparity in criminal conviction and incarceration rates, which translates to a racial disparity in access to housing.

There are statistical racial disparities at every stage of the criminal justice system. Research has demonstrated that African Americans are more likely to be stopped by police,¹⁶ prosecuted disproportionately, and punished more harshly than other ethnic groups.¹⁷ As a result, Black men—one third of whom are likely to serve time in prison or jail at some point in their lives—are incarcerated at a rate that is five times that of White men. Racial bias in plea-bargaining, which accounts for the vast majority of new criminal convictions, is a significant source of the disparity in incarceration. In a recent study of more than 48,000 cases in Wisconsin, legal scholar Carlos Berdejó found that White defendants were 25% more likely than Black ones to have their most serious charge either dropped or reduced to a less serious charge.¹⁸ As a result, Whites who were initially charged with a felony were an estimated 15% more likely to end up convicted of a misdemeanor instead. In addition, Whites who were initially charged with a misdemeanor were an estimated 75% more likely to be convicted of a crime carrying no possible incarceration, or not convicted at all.¹⁹

These disparities are even more acute in California. According to the Public Policy Institute of California, in 2017, African Americans made up 5.6% of the state's adult men but 28.5% of its male prisoners.²⁰ As a result, Black men were ten times more likely than White men to be incarcerated. Latino men were more than twice as likely as White men to be incarcerated. There were significant disparities among Black women, too, who were five times more likely than White women to be incarcerated.²¹ Inequalities in incarceration were driven in part by inequalities in policing. Again, according to the Public Policy Institute of California, Black male residents were three times more likely than White ones to be arrested in 2016.²²

¹⁶ “Findings” Stanford Open Policing Project. Accessed October 4, 2019. <https://openpolicing.stanford.edu/findings/>.

¹⁷ Porter, Nicole D., Nazgol Ghandnoosh, Josh Rovner, and Jean Chung. “Racial Disparity.” The Sentencing Project, September 30, 2019. <https://www.sentencingproject.org/issues/racial-disparity/>.

¹⁸ Berdejó, Carlos. (2018). *Criminalizing Race: Racial Disparities in Plea-Bargaining*. *Boston College Law Review*, 59(4), pp. 1189-91.

¹⁹ Berdejó, Carlos. (2018). *Criminalizing Race: Racial Disparities in Plea-Bargaining*. *Boston College Law Review*, 59(4), pp. 1189-91.

²⁰ Public Policy Institute of California. (2019). *California’s Prison Population*, p. 1.

²¹ Public Policy Institute of California. (2019). *California’s Prison Population*, p. 1.

²² Public Policy Institute of California. (2019). *Racial Disparities in California Arrests*, p. 1.

Here in Alameda County, 48% of probationers are African American²³ even though African Americans make up only 11% of the population.²⁴

This means that both nationally and locally, a disproportionate number of African Americans are impacted by criminal background checks in housing applications.

ALTERNATIVE ACTIONS CONSIDERED

Berkeley's Fair Chance Ordinance builds upon the work of other coalitions and communities to advance fair chance housing policies, namely in the cities of Oakland, Richmond, Seattle, and Portland. Seattle and Portland have first in time housing policies which limit landlord discretion in the selection of their tenants. Alameda County cities do not have such a policy.

Comparison between the Berkeley proposal and policies enacted by the cities of Oakland, Richmond, Seattle, and Portland:

- Similar to Oakland, Seattle and Portland, the Berkeley proposal would apply to all housing units, private and publicly subsidized.
- Similar to Oakland, Richmond and Seattle, the Berkeley proposal would enable Housing Providers who are funded by HUD to conduct limited criminal records checks and subject to due process protections for the applicant.
- Similar to Richmond, the Berkeley proposal would provide for a private right of action in addition to City enforcement. The City of Seattle, instead, utilizes its robust Department of Civil Rights which enforces civil rights violations.
- Unlike Portland and Seattle, the Berkeley proposal DOES NOT have a first in time tenant acceptance requirement. In addition, the Berkeley proposal maintains landlord discretion in the review of relevant information including landlord references, employment and income status, and credit report checks.

Less comprehensive versions of fair chance policies have passed in other cities including San Francisco; Urbana, Illinois; Madison, Wisconsin; New York, New York; and Newark, New Jersey.

²³ Total population in probation, Q4 2018 "Alameda County Probation Department Data Dashboard". Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

²⁴ "U.S. Census Bureau QuickFacts: Alameda County, California." United States Census Bureau. Accessed October 4, 2019. <https://www.census.gov/quickfacts/alamedacountycalifornia>.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

Transformative Policymaking Process:

The development of the Fair Chance Housing policy and ordinance was a partnership effort between the City sponsors and the Alameda County Fair Chance Housing Coalition leaders that followed the principles of democratic participatory policymaking. In the process led by the Just Cities team, people most impacted by the policy problems—formerly incarcerated residents and their family members—identified both the policy problems and also the policy solutions. A team of researchers from UC Berkeley Goldman School of Public Policy, policy experts, lawyers, and former City of Oakland senior officials from the City Administrator and City Attorney's offices provided research, policy, and legal support. The Coalition leaders also selected government officials to sponsor their proposed policy based upon their partnership criteria. More information about this transformative policymaking process and the policy research rationale behind the ordinance is included in the Just Cities' Policy Justice Memo, Attachment 2.

We are grateful for the dedicated leadership and hard work of the Coalition's leaders: John Jones III with Just Cities, Ms. Towanda Sherry with Faith in Action East Bay, Ms. Anita Wills with Essie Justice Group, and Katie Dixon, Taqwaa Bonner, and Succati Shaw with All of Us or None. The technical assistance and research partners included Margaretta Lin, Richard Illgen, and Alex Werth from Just Cities; Dan Lindheim, Larry Rosenthal, Tim Tsai, and Anthony Rodriguez from the Goldman School's Center for Civility and Democratic Engagement; Lisa Sitkin from the National Housing Law Project; and Tamisha Walker from the Safe Return Project.

The Coalition partners and supporters include: All of Us or None, Berkeley NAACP, Berkeley Oakland Support Services (BOSS), Community Works, Church by the Side of the Road, East Bay Community Law Center, East Bay for Everyone, East Bay Young Democrats, Essie Justice Group, Friends of Adeline, Just Cities, Justice Reinvestment Coalition, Laney College Restoring Our Communities Center, League of Women Voters for Oakland, Make Oakland Better Now, McGee Baptist Church, National Housing Law Project, Our Beloved Community Action Network, PolicyLink, Root & Rebound, Safe Return Project, Sierra Club, Tech Equity Collaborative, Underground Scholars of UC Berkeley, and The Way Church.

External Stakeholders Consulted

This ordinance was crafted after more than seven public hearings before the City of Berkeley's 4x4 and Land-Use, Housing & Economic Development Committees, multiple meetings with the leaders of the Berkeley Property Owners association, the Berkeley

Housing Authority, Seattle Office of Civil Rights and a community forum with Berkeley residents and community organizations.

Internal Stakeholders Consulted

This ordinance was developed in close consultation with the City Attorney's office, as well as feedback and support from the Berkeley Rent Stabilization Board.

Results

As a result of this consultation, outreach and committee processes the ordinance has been amended and improved. For example, Close Family Members were included in the definition of aggrieved person based on the lived experience of one of the POLs. Through the Policy Committee process, exemptions were included for owner-occupants, property owners renting their unit while on sabbatical, as well as ADUs, single-family homes, duplexes and triplexes. This principle of choice with whom you live was extended to tenants as a result of this process.

RATIONALE FOR RECOMMENDATION

POLICY GOALS:

1. Remove current structural barriers faced by formerly incarcerated people when they apply for private or publicly subsidized housing to enable them to be considered on the merits of their present situation, rather than the albatross of their past.
2. Create a due process system that a) enables formerly incarcerated people the ability to complain to the City and also sue to enforce their rights under the Ordinance; and b) builds on the City's current administrative systems and capacity.
3. Design policy terms based upon an understanding of the different application and review processes by private and multiple kinds of Affordable Housing providers.
4. Create reporting requirements that are streamlined and also help Affordable Housing providers transform their current application and review systems.
5. Avoid unintended consequences by not having burdensome or complex requirements for landlords.
6. Address the realities and special considerations of landlords who reside on their rental property that are smaller buildings, e.g. triplexes and smaller.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The effective date of the Ordinance is thirty days after final adoption of the ordinance. However, like in Oakland, a Housing Provider will not be liable for a violation within 180 days after the final adoption of the Ordinance unless the Provider has received a warning letter from the City regarding a violation of the Ordinance.

The Fair Chance Housing Ordinance applies to all Berkeley Housing Providers, with exemptions noted above. All applicants subject to an adverse action have a right to file a complaint with the City Manager within a year of the date of their application to be evaluated through an administrative hearing process. In the case of a hearing the public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence. The City can enforce any violation of the ordinance, with or without a complaint, under B.M.C. 1.28.

Similar to existing local tenant law, private right of action and attorney's fees for the prevailing applicant are awarded. The applicants and the City may avail themselves of any or all of these enforcement mechanisms to ensure compliance and an appropriate remedy for any violation.

In the case an applicant is denied access to private housing they are entitled to any notices required by state and federal law, and may also request a reason for the denial. Landlords are required to maintain documentation of any conviction history that they obtain on applicants for at least three years. Landlord retaliation is explicitly prohibited under this ordinance.

Under the ordinance Affordable Housing is defined as any housing provider receiving direct local, county, state, or federal subsidy. Section 8 landlords are excluded from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders and because of Berkeley's source of income anti-discrimination law²⁵.

HUD funded housing providers may conduct a limited background check if required by federal requirements. The housing provider must seek written consent from the applicant, provide the applicant with a copy of the criminal background report, and provide the applicant with the opportunity to provide rebutting or mitigating information.

²⁵ City of Berkeley Municipal Code 13.31.020 Discrimination based on source of income prohibited.

Only publicly subsidized housing providers would submit an annual certification of compliance to the City utilizing a City template as provided by Administrative Regulations. The Coalition would like to work with the City on designing the compliance template.

The City Manager or their designee would provide an annual status report to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information. It is especially critical in the early years of new legislation for the City Council and the public to know about the implementation status of the legislation and whether any aspects need to be refined.

Additionally, the City Manager should explore alternatives to a complaint based enforcement process that might prove more effective. For example, staff from Seattle's Office of Civil Rights shared that their most effective measure of enforcement is their compliance testing program. In addition to accepting complaints, Seattle staff submits housing applications across the city to discern compliance with anti-discrimination laws. Good faith actors found to be in violation are offered technical assistance in the form of education and training prior to any penalties being assessed. Just as in Seattle, a testing program might contribute to broader Berkeley enforcement efforts.

Addressing Common Concerns and Misconceptions

Under this ordinance, landlords maintain their discretion to use accurate information that is critical to assessing whether an applicant will be a good tenant. This ordinance does not prevent the use of credit checks, income verification, or references from informing a landlord's decision-making process. Unlike jurisdictions that have passed similar ordinances, Berkeley does not have first-in-time laws that require a landlord to accept the first qualified applicant as their tenant.

Contrary to misconceptions, the Fair Chance Housing Ordinance does not impact landlords' ability to remove troublesome tenants. Existing state and local laws remain intact that address the rights of landlords and tenants to manage problematic behaviors. B.M.C. 13.76.130 outlines reasons for a "just-cause" eviction including refusal to pay rent, substantial violation of the terms of a lease, or substantial damages to the property.

One of the “just-cause” terms for an eviction allowed in B.M.C. 13.76.130 (A.5.) expressly allows eviction for illegal activities pursuant to subdivision 4 of the Code of Civil Procedure Section 1161. Thus, if a tenant commits certain serious violations, under Cal. Code of Civ. Proc. § 1161(4), a landlord can issue a three-day unconditional quit notice to vacate. The tenant must move out of the unit within three days of receiving the notice or they may face eviction.

Landlords must always use their best judgement when selecting tenants. The Fair Chance Housing Ordinance prohibits the use of problematic, error-prone databases as a tool in these evaluations. Existing remedies and laws remain to support landlords’ with troublesome or criminal tenants.

City Funding for Additional Community Outreach and Education

As City experience has informed us, effective implementation of new legislation requires informing both the regulated groups and members of the protected groups of the new laws. In sharing their lessons learned about their Fair Chance Housing policy, the City of Seattle’s Civil Rights Office strongly recommended City investment in community outreach and education efforts. The City of Oakland Community and Economic Development committee unanimously passed a motion to include City funds for Fair Chance Housing community outreach and enforcement as part of their mid-cycle budget process. The Alameda County Fair Chance Housing Coalition have been in conversation with private funders and Alameda County about their potential investment in countywide community outreach and education to ensure effective implementation of the Fair Chance Housing policies being passed in Alameda County.

The City of Berkeley should participate in a countywide coordinated community outreach and education program and allocate appropriate funding as determined by the City Manager during the next budget cycle towards these critical efforts.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES AND LAWS

In 2014 the City Council unanimously passed a Fair Chance Ordinance to extend its existing policy, passed in 2008, to eliminate disclosure of conviction history information from the City’s job application, or “Ban the Box” policy, to private employers within the City of Berkeley²⁶. Fair Chance Housing legislation is proposed in this same spirit of acknowledging and reconciling some of the harm and injustice caused by our criminal “justice” system of mass incarceration.

²⁶ http://www.cityofberkeley.info/Clerk/City_Council/2014/10_Oct/Documents/2014-10-21_Item_25_Fair_Chance_Ordinance.aspx

FINANCIAL IMPLICATIONS

Costs associated with the adoption of this Ordinance include development and mailing of required notices, public education, annual reporting, and administrative enforcement (investigation and processing of complaints).

The coalition has indicated that they have partners interested in supporting the city with community education and a participatory action impact study.

Given the direct connection between housing barriers for formerly incarcerated people and homelessness, we believe that removing these barriers may reduce the number of homeless persons and result in potential City cost savings overtime.

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Ordinance

2: Berkeley Fair Chance Housing Policy Brief-Just Cities, December

ORDINANCE NO. -N.S.

PROHIBITING CONSIDERATION OF CRIMINAL HISTORIES IN SCREENING APPLICATIONS FOR RENTAL HOUSING THE USE OF CRIMINAL HISTORY IN HOUSING DECISIONS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.106 is hereby added to read as follows:

Chapter 13.106

Prohibiting the Use of Criminal History in Housing Decisions

Sections:

- 13.106.010 Title**
- 13.106.020 Findings**
- 13.106.030 Definitions**
- 13.106.040 Use of Criminal History in Housing Decisions**
- 13.106.050 Requirements for Housing Providers**
- 13.106.060 Retaliation Prohibited**
- 13.106.070 Recordkeeping and Confidentiality**
- 13.106.080 Implementation**
- 13.106.090 Administrative Complaints**
- 13.106.100 Enforcement**
- 13.106.110 SeverabilityNo Conflict with State or Federal Law**
- 13.106.120 Effective DateSeverability**

13.106.010 Title

This Chapter shall be known as the “Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.” and may be shortened to the “Fair Chance Housing Ordinance”.

13.106.020 Findings

- A. Mass incarceration is a national and local crisis and restoring the rights of people affected by mass incarceration is a national priority.
- B. The U.S. Department of Justice has estimated one in every three adults in the United States has either an arrest or conviction record.
- C. Studies have found that private criminal databases pull source information from inadequate records and lack accountability procedures to ensure that the database records provided to Housing Providers are accurate. Housing Providers in conducting criminal background checks are relying on such inaccurate information in evaluating housing applications.
- D. Formerly incarcerated persons face barriers to access to both private rental and publicly subsidized affordable housing.

- E. Homelessness is a critical issue in Berkeley and formerly incarcerated people are disproportionately affected by homelessness, which can prevent a formerly incarcerated person from getting a job, from visiting with their children, and from fulfilling other needs that are fundamental to reintegrating with the community after incarceration.
- F. The unmet housing needs of formerly incarcerated people in Berkeley are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community.
- G. Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration.
- H. Reliance on criminal history to select tenants impedes formerly incarcerated persons from gaining access to housing in the City of Berkeley, to the detriment of health, welfare, and public safety of the City's residents.

13.106.30 Definitions

- A. "Adverse Action" means to take one of the following actions based on ~~based on~~ a person's Criminal or Conviction History:
 1. Failing or refusing to rent or lease Housing to a person;
 2. Failing or refusing to continue to rent or lease Housing to a person;
 3. Reducing the amount or term of any person's subsidy for Housing;
 4. Treating an Applicant or tenant differently from other applicants or tenants, including but not limited to, taking such actions as requiring higher security deposit or rent;
 5. Treating a person as ineligible for a tenant-based rental assistance program, including but not limited to, the Section 8 ~~tenant-based voucher~~Housing Choice Voucher pProgram (42 U.S.C. Section 1437f); or
 6. Failing to permit a tenant's Close Family Member to occupy a rental unit while the occupying tenant remains in occupancy.
- B. "Affordable Housing" shall mean any Housing that (1) has received or is receiving City, County, 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 rental housing for extremely low income, very low income, low income, and moderate income households (collectively, "Public Funding"), with the exception of Housing where the only Public Funding received is in the form of a Local, State or Federal tenant-based voucher, such as through the Section 8 ~~tenant-based~~Housing Choice ~~voucher~~Voucher pProgram (42 U.S.C. Section 1437f); or (2) is subject to affordability and related requirements pursuant to the City's Below Market-Rate Rental Housing Program, including but not limited to the Affordable Housing Mitigation Fee Ordinance (Chapter ~~Section~~ 22.20.065), the State Density Bonus law (California Government Code Sections 65915-65918 and Chapter 23C.14), and the Low Income Inclusionary Live/Work Units Ordinance (Section 23E.20.080).

- C. "Affordable Housing Provider" shall mean any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Housing Providers, and any government agency, including but not limited to the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 **Housing Choice Voucher pProgram** (42 U.S.C. Section 1437f), shall also be considered an "Affordable Housing Provider."
- D. "Aggrieved Person" means an Applicant who believes they were subject to an Adverse Action; a tenant who believes they or their Close Family Member was subject to an Adverse Action based on the application of an Applicant to reside in such family member's rental unit; or a tenant who believes they were subject to an Adverse Action based on the failure or refusal to permit a person to reside in such tenant's rental unit to replace an existing tenant, add a new tenant, or to sublet to a subtenant.
- E. "Applicant" means a person who seeks information about, visits, or applies to rent or lease Housing; who applies for a tenant-based rental assistance program, including but not limited to the Section 8 **Housing Choice Voucher pProgram** (42 U.S.C. **section1437fSection 1437f**); who seeks to be added as a household member to an existing lease for Housing; or, with respect to any Criminal History that occurred prior to the beginning of the person's tenancy, who currently rents or has a lease for Housing.
- F. "Arrest" means 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, **and/or tried, and/or convicted or and** acquitted for any felony, misdemeanor, or other criminal offense.
- G. "Background Check Report" means any report regarding an Applicant's Criminal History, including but not limited to those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or any consumer reporting or tenant screening agency.
- H. "Close Family Member" means a spouse, **registered** domestic partner, child, sibling, parent, grandparent, or grandchild.
- I. "Conviction" means a record from any jurisdiction that includes information indicating that a person has been convicted **of a felony or misdemeanor or other of a criminal offense and for which the person was placed on probation, fined, imprisoned and/or paroled.**
- J. "Criminal History" means information transmitted orally or in writing or by any other means, and obtained from any source, including but not limited to the person to whom the information pertains, a government agency, or a Background Check Report, regarding one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, **sealed,** voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code Sections 1203.1 or 1203.4); a determination or adjudication in the juvenile justice system; a matter considered in or processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.
- K. "Housing" means any residential rental housing, building, or unit in the City of Berkeley, with the exception of the following:

Commented [TT1]: Jay suggested this change to clarify who would actually qualify to make this complaint. He felt it was important to be able to discern who can trigger the hearing process.

1. Single Family Dwellings where one or more owners occupies the dwelling as their principal residence;
 2. Single Family Dwellings with ~~an~~-Accessory Dwelling Units, as defined in Section 23F.04.010, where either the main or an Accessory Dwelling Unit is occupied by one or more owners as their principal residence;
 3. Duplexes or triplexes where one of the units is occupied by one or more owners as their principal residence;
 4. Units rented pursuant to Section 13.76.130 A.10; and
 5. Tenant-occupied units where an occupying tenant seeks to replace an existing co-tenant, add an additional co-tenant, or sublet the unit, provided that the occupying tenant remains in occupancy.
- L. "Housing Provider" shall mean any Person that owns, master leases, manages, or develops Housing in the City. For the purpose of this definition, "Person" includes one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and any political or civil subdivision or agency or instrumentality of the City. In addition, Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Persons, and any government agency, including but not limited to the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 Housing Choice Voucher Program program (42 U.S.C. Section 1437f), shall also be considered a "Housing Provider".
- M. "Person" shall mean one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or any political or civil subdivision or agency or instrumentality of the City.

13.106.040 Use of Criminal History in Housing Decisions

- A. Except as provided in Paragraphs B and C of this Section, a Housing Provider shall not, at any time or by any means, whether direct or indirect, inquire about an Applicant's Criminal History, require an Applicant to disclose their Criminal History, require an Applicant to authorize the release of their Criminal History or, if such information is received, base an Adverse Action in whole or in part on an Applicant's Criminal History.
- B. It shall not be a violation of this Chapter for a Housing Provider to comply with Federal or State laws that require the Housing Provider to automatically exclude tenants based on certain types of criminal history (e.g. Ineligibility of Dangerous Sex Offenders for Admission to Public Housing (42 U.S.C. Section 13663(a); Ineligibility of Individuals Convicted for Manufacturing Methamphetamine on Premises of Federally Assisted Housing for Admission to Public Housing and Housing Choice Voucher Programs (24 C.F.R. Section 982.553)).
However, if such a requirement applies, the Housing Provider shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider first does the following: (1) informs the Applicant in advance that the Housing Provider will check for certain types of criminal history; (2) requests and obtains written consent, or if the Applicant objects, provides the applicant the

opportunity to withdraw their application; (3) complies with the requirements in subsections D and E of this Section, provided that if such a requirement applies, Applicant's Criminal History until the Housing Provider has first obtained written consent and followed Paragraphs D and E of this Section:

- B. Any Adverse Action based on Criminal History obtained pursuant to this Paragraph shall be limited to actions required to comply with State or Federal law.
1. Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History;
 2. Provided to the Applicant a conditional lease agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History criteria; and
 3. Informed the Applicant in advance that the Housing Provider will be obtaining information about the Applicant's Criminal History and obtained the written consent of the Applicant to obtain such information.

The Applicant may elect to withhold such consent and withdraw their application. Any Adverse Action based on Criminal History obtained pursuant to this Paragraph shall be limited to actions required to comply with State or Federal law.

- C. In compliance with state law, in order to protect persons at risk pursuant to Penal Code Section 290.46(j)(1), theA Housing Provider may review the State registry of lifetime sex offenders operated by the State of California Department of Justice; provided, however, that (1) the Housing Provider has stated the lifetime sex offender screening requirement in writing in the rental application; and (2) the Housing Provider may shallnot inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider has first:
1. Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History;
 2. Provided to the Applicant a conditional lease rental agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History and other qualifying criteria; and
 3. Informed the Applicant in advance that the Housing Provider will checking the sex offender registry and obtaining information about the Applicant's Criminal History and obtained the written consent of the Applicant to obtain such information.

The Applicant may elect to withhold such consent and withdraw their application. Any use of information obtained by a Housing Provider pursuant to this Paragraph shall comply with California Penal Code Section 290.46(l).

- D. A Housing Provider's request to obtain written consent from the Applicant to obtain information about the Applicant's Criminal History under Paragraphs B or C of this Section shall inform the Applicant that the Housing Provider may be required to share information about the Applicant's Criminal History with the City of Berkeley for purposes of enforcing the requirements of this Chapter.

- E. If any Adverse Action is based in whole or in part on the Applicant's Criminal History, the Housing Provider shall provide a written notice to the Applicant regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action, instructions on how to file a complaint about the Adverse Action with the City, a list of local legal service providers including contact information, and the Applicant with a copy of any Background Check Report or other information related to the Applicant's Criminal History that served as a basis for the Adverse Action. The Housing Provider shall provide the Applicant an opportunity to respond with rebutting or mitigating information prior to the denial of the Applicant's housing application, present evidence that information about the Applicant's Criminal History is inaccurate or of mitigating circumstances related to the Applicant's Criminal History. The Housing Provider shall not require reimbursement or payment from the Applicant for the cost of providing any information required under this Paragraph.

13.106.050 Requirements for Housing Providers

- A. It shall be unlawful for any Housing Provider subject to the requirements of this Chapter to produce or disseminate any advertisement related to Housing that expresses stating, directly or indirectly, that any person with Criminal History will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, Criminal History will be considered in connection with the rental or lease of real property, except as required by State or Federal law.
- B. The City shall publish and make available to Housing Providers, in English, Spanish, and all languages spoken by more than five percent (5%) of the City's population, a notice that informs Applicants for Housing of their rights under this Chapter. The notice shall contain the following information:
1. A description of the restrictions and requirements of this Chapter;
 2. Instructions for submitting a complaint to the City regarding a violation of this Chapter; and
 3. Information about community resources available to assist an Applicant in connection with a violation of this Chapter.
- C. Housing Providers subject to the requirements of this Chapter shall prominently display the notice made available pursuant to Section 13.106.50.B. in their application materials, on their websites, and at any rental or leasing offices.
- D. In addition to the requirements in Paragraphs A-C of this Section, Affordable Housing Providers shall:
1. Provide any Applicant subject to an Adverse Action a written notice regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action; instructions regarding how to file a complaint about the Adverse Action with the City, including the deadlines set forth in Section 13.106.090.A; a list of local legal services providers, including contact information; and a copy of any Background Check Report or other Criminal History obtained by the Affordable Housing Provider; and
 2. Submit to the City an annual certificate of compliance with the requirements of this Chapter in the form provided by the City.

13.106.060 Retaliation Prohibited

It shall be a violation of this Chapter to interfere with, ~~or restrain, or deny the exercise of, or the attempt to exercise,~~ any right protected under this Chapter, or to take any Adverse Action against any Person because the Person exercised or attempted in good faith to exercise any right protected under this Chapter.

13.106.070 Recordkeeping and Confidentiality

- A. Housing Providers shall maintain a record of any Criminal History obtained for any Applicant for Housing for a period of at least three years. To the maximum extent permitted by law, any information obtained regarding an Applicant's Criminal History shall remain confidential.
- B. Nothing in this section shall prohibit a Housing Provider from complying with a request by the City to provide records for purposes of enforcing the requirements of this Chapter.

13.106.080 Implementation

- A. The City Manager or their designee shall take all necessary steps to implement this Chapter, including but not limited to the following:
 1. Developing any notice required for purposes of implementing the requirements of this Chapter, the annual compliance certification form, and other implementation documents, including written materials for Housing Providers and potential Applicants; and
 2. Conducting outreach to and preparing a plan to provide ongoing training about the requirements Chapter for Housing Providers.

The City Manager is authorized to adopt ~~administrative~~ Administrative regulations Regulations necessary to implement the requirements of this Chapter.

- B. The City Manager or their designee shall provide an annual public report to the City Council on the implementation and enforcement of this Chapter. The annual report shall include, at a minimum: (1) a summary of the annual compliance certifications submitted by Affordable Housing Providers; (2) the number of complaints filed with the City regarding violations of this Chapter and the outcomes of such complaints; (3) and the number of notices filed with the City regarding actions brought under Section 13.106.100.C and the outcomes of any such actions.

13.106.90 Administrative Complaints

- A. Any Applicant subject to an Adverse Action or their Close Family Member who believes the Adverse Action was based on a violation of this Chapter shall have the right to submit a complaint to the City within one year of the date the Applicant submitted an application to the Housing Provider or the date of the violation, whichever is earlier. The City will schedule an administrative hearing before a hearing officer designated by the City Manager within 90 days of the date of submission of the complaint. The deadlines set forth in this Paragraph may be extended with the consent of all parties.
- B. The parties shall have the following rights at an administrative hearing conducted pursuant to this Section:

1. To have an advocate of their choosing to represent them at the hearing;
 2. To present any relevant witnesses and evidence, which will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding;
 3. To examine the other party's evidence and to rebut and cross-examine any witnesses;
 4. To have a translator present at the hearing, when translation is reasonably necessary and reasonably available;
 5. To request any reasonable accommodation needed to participate in the hearing process; and
 6. To record the hearing.
- C. Where the City determines that a violation of the Chapter has occurred, the City shall issue a determination and order any appropriate relief under this Chapter.

13.106.100 Enforcement

- A. The City may issue an Administrative citation under Chapter 1.28 to any Person who violates any provision of this Chapter.
- B. The City Attorney may bring an action on behalf of the City seeking injunctive relief to restrain or enjoin any violation of this Chapter.
- C. Any Aggrieved Person who believes that the provisions of this Chapter have been violated shall have a private right of action for injunctive relief, and actual damages or statutory damages up to three times the amount of one month's rent that the Housing Provider charged for the unit in question at the time of the violation. In addition to actual or statutory damages, a court may award punitive damages where it is proven by clear and convincing evidence that a violation of this Chapter has been committed with oppression, fraud, or malice. In any action brought under this Chapter, the court may award reasonable attorneys' fees and cost of action pursuant to Code of Civil Procedure section 1021.5. The right to file an action under this Paragraph is independent of the right to file an administrative complaint under Section 13.106.90 and does not require an Applicant to have filed a prior complaint with the City of Berkeley.
- D. When permitted by law, an award of actual damages under this Chapter may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the court if a defendant is found to have acted in knowing violation of, or in reckless disregard of, the provisions of this Chapter.
- E. In an action brought by the City Attorney pursuant to this Section, a court of competent jurisdiction may order that a civil penalty be assessed against the Housing Provider to vindicate the public interest, which penalty shall be payable to the City of Berkeley. The civil penalty assessed against a Housing Provider shall be at least one thousand dollars (\$1,000) and shall not exceed ten thousand dollars (\$10,000) for each violation of this

Chapter. A defendant shall be liable for an additional civil penalty of up to five thousand dollars (\$5,000) for each violation of this Chapter committed against a person who is disabled within the meaning of California Government Code section 12926 *et seq.*, or is aged sixty-five (65) or over.

- F. An attorney who represents an Applicant in litigation against a Housing Provider brought under this Chapter shall provide notice to the City within ten (10) days of filing court action against the Housing Provider, and inform the City of the outcome of the court action within ten (10) days of any final judgment.

13.106.110 No Conflict with State or Federal Law

This Chapter is not intended to conflict with state or federal law. If there is a conflict between the provisions of federal or state law and this Article, federal or state law shall control.

13.106.120 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

13.106.120

Section 2. — Effective Date

The provisions of this Chapter shall take effect upon thirty days after final adoption of this ordinance. A Housing Provider shall not be liable for a violation within 180 days after final adoption of this Chapter, unless the Housing Provider has first received a warning letter from the City regarding a violation of the Ordinance.

The provisions of this Chapter shall take effect on July 1 September 1, 2020.

Section 3. Notice to Housing Providers

The City Manager is directed to cause notice of this Ordinance to be mailed to all residential rental property owners subject to this Chapter within 90 days of final adoption of this Ordinance.

Section 4. Posting

Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



DATE: October 28, 2019, updated January 23, 2020

TO: City of Berkeley Mayor Jesse Arreguin and Land Use Committee

FROM: Just Cities: Margaretta Lin, JD, MA, Executive Director; John Jones III, Director of Community & Political Engagement; Richard Illgen, Senior Advisor; Tim Tsai, MPP, Policy Justice Research Associate; Alex Werth, PhD, Research Consultant

SUBJECT: Fair Chance Housing Ordinance that removes structural barriers for people with criminal histories in applications for rental housing

SUMMARY

As research and lived experience demonstrate, formerly incarcerated people experience significant barriers beyond the high cost of rent that prevent them from securing housing. They are screened out when applying to rent housing due to criminal background checks in private rental, nonprofit affordable housing, and public housing units. Even living with family members is not always a viable solution as it may put their family's housing at risk-- rental agreements may prohibit or limit people with criminal histories from residing in the units. Fair Chance Housing is legislation that prohibits the use of criminal histories for most offenses in determining access to housing. It also bans the use of advertising language that excludes people with arrest records, conviction records, or criminal history. In short, Fair Chance Housing legislation removes structural barriers to housing and enables landlords to consider the merits of individual housing applications—providing people with a fair chance.

Led by Just Cities/the Dellums Institute for Social Justice, The **Alameda County Fair Chance Housing Coalition** has been working to remove such structural exclusionary barriers for people coming home from prison. The Coalition partners and supporters include: All of Us or None, Berkeley NAACP, Berkeley Oakland Support Services (BOSS), Community Works, Church by the Side of the Road, East Bay Community Law Center, East Bay for Everyone, East Bay Young Democrats, Essie Justice Group, Friends of Adeline, Just Cities, Justice Reinvestment Coalition, Laney College Restoring Our Communities Center, League of Women Voters for Oakland, Make Oakland Better Now, McGee Baptist Church, National Housing Law Project, Our Beloved Community Action Network, PolicyLink, Root & Rebound, Safe Return Project, Tech Equity Collaborative, Underground Scholars of UC Berkeley, and The Way Church.

The Fair Chance Housing Ordinance would result in:

- 1) Clear rules and standards for all landlords regarding the use of criminal background checks in the housing application process and the elimination of the current arbitrary system that relies on inaccurate criminal background databases.

- 2) Landlords assessing the merits of individual housing applications rather than the current status of blanket exclusion of applications solely on the basis of criminal records.
- 3) Formerly incarcerated people and their family members having access to safe, stable, and affordable housing that they need in order to reclaim their lives and effectively re-integrate into the community.
- 4) Decrease in recidivism rates by removing structural barriers to stable housing, including with family members, for formerly incarcerated people.

BACKGROUND

SUMMARY OF FLAWS WITH CRIMINAL BACKGROUND DATABASE SYSTEMS

Research shows that government repositories of criminal records are routinely incomplete, thus making commercial criminal background reports inaccurate and/or misleading. In 2006, the U.S. Department of Justice (DOJ) found that an estimated 50% of FBI arrest records, which are used by many background check companies, were missing information on the final disposition of the cases in question.¹ In 2016, the DOJ found that an estimated 32% of records in state criminal history repositories were missing final disposition data.² Incomplete data at the state and federal levels undermine the fairness and accuracy of commercial criminal background reports, which rely upon governmental data. In particular, out-of-date information about the final disposition of a case means that data about arrests are routinely listed in background reports even when the charges were eventually dropped, reduced, or disproven in court.

The consequences of these database gaps are significant. According to the National Employment Law Project (NELP), “one third of felony arrests do not result in conviction and many others are reduced to misdemeanors.”³ While industry-wide data on the inaccuracies of commercial criminal background reports are unavailable, the NELP estimates that 1.8 million workers are subject to FBI checks that include faulty or incomplete information each year. Further, many on-line databases accessible through search engines are also inaccurate, even representing persons without criminal records as having been arrested or convicted.

The lack of accurate disposition data is one of many issues that undermine the accuracy of private criminal background reports. According to a review by the National Consumer Law Center, such reports suffer from a range of problems, including: the publication of sealed or expunged records; the

¹ U.S. Department of Justice. (2006). *The Attorney General’s Report on Criminal History Background Checks*, p. 3.

² National Consortium of Justice Statistics. (2018). *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, p. 2.

³ National Employment Law Project. (2013). *Wanted: Accurate FBI Background Checks for Employment*, pp. 1-2.



misclassification of crimes (e.g. reporting a misdemeanor as a felony); the assignment of crimes to an individual who did not commit them, otherwise known as a “false positive”; and the display of data in a misleading manner (e.g. reporting a single arrest multiple times because it appears in multiple databases).⁴ Unlike government screens, such commercial background checks are conducted using basic personal information, like names. In the late 1990s, a task force consisting of state and federal agencies found that, compared with fingerprint-based checks, name-based checks resulted in a false-positive rate of 5.5%.⁵ This means that around 1 in 20 apparent identifications of a crime was ascribed to a person who did not in fact commit that crime.

SUMMARY OF HOUSING ACCESS BARRIERS FOR PEOPLE WITH CRIMINAL RECORDS

Alameda County service providers and national researchers have documented barriers to access to both private rental and publicly subsidized affordable housing faced by formerly incarcerated residents.⁶ Results of a 2019 Goldman School survey and interviews of formerly incarcerated persons in Alameda County found that many formerly incarcerated persons could not stay in public housing with a relative or family member due to public housing rules or were denied private or public rental housing due to their incarceration record.⁷ In addition, a recent survey by the Berkeley Property Owners Association found that the majority of landlord survey respondents conducted criminal background checks. We note that persons paroled from incarceration are generally to be returned to the county of their residence (CA Penal Code 3003); therefore, parolees from this area will be returning home.

SUMMARY OF PUBLIC HEALTH & SAFETY IMPACTS FROM HOUSING BARRIERS:

As the state with the second highest population of people currently in prison or jail in the country,⁸ California will need to house formerly incarcerated people as they reenter society in a highly impacted housing market. Alameda County has a total of 7,900 people on probation or parole.⁹ Incarceration and lack of housing can lead to severely limited economic opportunity, thereby increasing the chances of recidivism and public safety impacts.

⁴ National Consumer Law Center. (2012). *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, p. 15.

⁵ National Association of Professional Background Screeners. (2005). *The National Crime Information Center: A Review and Evaluation*, pp. 11-2.

⁶ See Corinne Carey, No Second Chance: People with Criminal Records Denied Access to Public Housing, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, Taking Stock: Housing, Homelessness and Prisoner Re-Entry (2004); and Every Door Closed: Barriers Facing Parents With Criminal Records, CLASP and CLS Report, Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”.

⁷ Rodriguez, Anthony (2019) “A Just Return Home: Identifying and Removing Barriers to Housing for Formerly Incarcerated Residents Through Suggested Policies for County of Alameda” Report for Just Cities and Goldman School of Public Policy. p.23

⁸ California 2017 raw numbers. “State-by-State Data.” The Sentencing Project. Accessed October 4, 2019.

<https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.Total&state2Option=0>

⁹ Total population in probation, Q4 2018 “Alameda County Probation Department Data Dashboard”. Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

Research has shown that access to stable and affordable housing enables people to successfully re-integrate into society. For example, two studies in Ohio¹⁰ and Maryland¹¹ found that providing housing subsidies or public housing to recently released incarcerated persons reduced the chances that they would be rearrested in the first year. A government study conducted in the United Kingdom found that stable housing was associated with a 20% reduction in the chance of being reconvicted.¹²

Extensive research also shows the direct link between incarceration history, homelessness, and health.¹³ For example, a recent participatory action research project between Just Cities, The Village, and the UC Berkeley Goldman School for Public Policy's Center for Civility & Democratic Engagement found that 73% of unhoused residents interviewed in Oakland's encampments were formerly incarcerated!¹⁴ Based upon anecdotal and other data, we believe that unhoused people in Berkeley are also disproportionately formerly incarcerated. For example, in the 2017 Point in Time count for Berkeley homeless residents, one of the top six reasons listed for the primary cause of homelessness was incarceration (6% of respondents).

In addition, there are an estimated 10 million children nationwide that are impacted by a parent or close relative who are in the criminal justice system.¹⁵ These children suffer from an increased rate of depression, antisocial behavior, drug use, and suicide.¹⁶

SUMMARY OF RACIAL DISPARITY:

There is an extreme racial disparity in criminal conviction and incarceration rates, which translates to a racial disparity in access to housing.

¹⁰ Fontaine, Jocelyn, Douglas Gilchrist-Scott, John Roman, Samuel Taxy, and Caterina Roman. "Supportive Housing for Returning Prisoners: Outcomes and Impacts of the Returning Home-Ohio Pilot Project." PsycEXTRA Dataset, August 2012. <https://doi.org/10.1037/e527702013-001>.

¹¹ Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." Journal of Experimental Criminology 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

¹² Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." Journal of Experimental Criminology 14, no. 2 (2017): 213–26. <https://doi.org/10.1007/s11292-017-9317-z>.

¹³ Roman, Caterina Gouvis, and Jeremy Travis. "Taking Stock: Housing, Homelessness, and Prisoner Reentry." PsycEXTRA Dataset, 2004. http://webarchive.urban.org/UploadedPDF/411096_taking_stock.pdf p.7-8

¹⁴ Tsai, Tim. "Standing Together: A Prevention-Oriented Approach to Ending Homelessness in Oakland." <http://bit.ly/HomelessPrevention2019> p.12

¹⁵ Hirsch, Amy E, Sharon M Dietrich, Rue Landau, Peter D Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. Every Door Closed: Barriers Facing Parents with Criminal Records. Philadelphia, PA: Community Legal Services, Inc, 2002. p.1 https://www.clasp.org/sites/default/files/publications/2018/01/every_door_closed.pdf

¹⁶ Davis, Laurel, and Rebecca J. Shlafer. "Mental Health of Adolescents with Currently and Formerly Incarcerated Parents." Journal of Adolescence 54 (2017): 120–34. <https://doi.org/10.1016/j.adolescence.2016.10.006>. Shlafer, Rebecca J, Erica Gerrity, Ebony Ruhland, and Marc Wheeler. "Children with Incarcerated Parents – Considering Children's Outcomes in the Context of Complex Family Experiences." Children, Youth, and Family Consortium, 2013. <https://www.prisonpolicy.org/scans/umn/June2013ereview.pdf>. p.3

There are statistical racial disparities at every stage of the criminal justice system. Research has demonstrated that African Americans are more likely to be stopped by police,¹⁷ prosecuted disproportionately, and punished more harshly than other ethnic groups.¹⁸ As a result, Black men—one third of whom are likely to serve time in prison or jail at some point in their lives—are incarcerated at a rate that is five times that of White men. Racial bias in plea-bargaining, which accounts for the vast majority of new criminal convictions, is a significant source of the disparity in incarceration. In a recent study of more than 48,000 cases in Wisconsin, legal scholar Carlos Berdejó found that White defendants were 25% more likely than Black ones to have their most serious charge either dropped or reduced to a less serious charge.¹⁹ As a result, Whites who were initially charged with a felony were an estimated 15% more likely to end up convicted of a misdemeanor instead. In addition, Whites who were initially charged with a misdemeanor were an estimated 75% more likely to be convicted of a crime carrying no possible incarceration, or not convicted at all.²⁰

These disparities are even more acute in California. According to the Public Policy Institute of California, in 2017, African Americans made up 5.6% of the state's adult men but 28.5% of its male prisoners.²¹ As a result, Black men were ten times more likely than White men to be incarcerated. Latino men were more than twice as likely as White men to be incarcerated. There were significant disparities among Black women, too, who were five times more likely than White women to be incarcerated.²² Inequalities in incarceration were driven in part by inequalities in policing. Again, according to the Public Policy Institute of California, Black male residents were three times more likely than White ones to be arrested in 2016.²³

Here in Alameda County, 48% of probationers are African American²⁴ even though African Americans make up only 11% of the population.²⁵

This means that both nationally and locally, a disproportionate number of African Americans are impacted by criminal background checks in housing applications.

¹⁷ “Findings” Stanford Open Policing Project. Accessed October 4, 2019. <https://openpolicing.stanford.edu/findings/>.

¹⁸ Porter, Nicole D., Nazgol Ghandnoosh, Josh Rovner, and Jean Chung. “Racial Disparity.” The Sentencing Project, September 30, 2019. <https://www.sentencingproject.org/issues/racial-disparity/>.

¹⁹ Berdejó, Carlos. (2018). *Criminalizing Race: Racial Disparities in Plea-Bargaining*. *Boston College Law Review*, 59(4), pp. 1189-91.

²⁰ Berdejó, Carlos. (2018). *Criminalizing Race: Racial Disparities in Plea-Bargaining*. *Boston College Law Review*, 59(4), pp. 1189-91.

²¹ Public Policy Institute of California. (2019). *California’s Prison Population*, p. 1.

²² Public Policy Institute of California. (2019). *California’s Prison Population*, p. 1.

²³ Public Policy Institute of California. (2019). *Racial Disparities in California Arrests*, p. 1.

²⁴ Total population in probation, Q4 2018 “Alameda County Probation Department Data Dashboard”. Alameda County. Accessed October 4, 2019. <https://www.acgov.org/probation/dashboard.htm>.

²⁵ “U.S. Census Bureau QuickFacts: Alameda County, California.” United States Census Bureau. Accessed October 4, 2019. <https://www.census.gov/quickfacts/alamedacountycalifornia>.



SUMMARY OF HUD GUIDANCE:

On or about April 4, 2016, the United States Department of Housing and Urban Development issued the “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” in which it states that “Policies that exclude persons based on criminal history must be tailored to serve the housing provider’s substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction.”

SUMMARY OF OTHER FAIR CHANCE HOUSING POLICIES:

The Coalition’s efforts build upon the remarkable work of other coalitions and communities to advance fair chance housing policies, namely in the cities of Richmond, Seattle, and Portland. In 2016, the Safe Return Project and its coalition partners including the Dellums Institute worked with the City of Richmond to pass legislation to remove housing barriers for formerly incarcerated residents to access any publicly subsidized housing. In 2017, Seattle community leaders in the Mayor’s Fair Housing Task Force worked with the City of Seattle to enact legislation that removed housing barriers for formerly incarcerated residents to access private or publicly subsidized rental housing. In 2019, the City of Portland enacted a Fair Chance Housing policy similar to Seattle’s policy.

We note that the cities of Seattle and Portland have first in time housing policies which limit landlord discretion in the selection of their tenants. Alameda County cities do not have such a policy.

Here’s a summary of the main comparison between the Berkeley proposal and policies enacted by the cities of Richmond, Seattle, and Portland:

- Similar to Seattle and Portland, the Berkeley proposal would apply to all housing units, private and publicly subsidized.
- Similar to Richmond and Seattle, the Berkeley proposal would enable Housing Providers who are funded by HUD to conduct criminal records checks after a Conditional Offer of Housing has been granted and subject to certain procedures.
- Similar to Richmond, the Berkeley proposal would provide for a private right of action in addition to City enforcement. The City of Seattle, instead, utilizes its robust Department of Civil Rights which enforces civil rights violations.
- Similar to Seattle, the Berkeley proposal would prohibit the use of criminal records checks in the housing application process, with the exception that allows for the review of sex offender registry.
- Unlike Portland and Seattle, the Berkeley proposal DOES NOT have a first in time tenant acceptance requirement. In addition, the Berkeley proposal maintains landlord discretion in the review of relevant information including landlord references, employment and income status, and credit report checks.



Less comprehensive versions of fair chance policies have passed in other cities including San Francisco; Urbana, Illinois; Madison, Wisconsin; New York, New York; and Newark, New Jersey.

POLICY DEVELOPMENT PROCESS--CENTERING PEOPLE MOST IMPACTED BY THE POLICY PROBLEM:

Building on their successful anti-displacement funding efforts with Alameda County and the cities of Berkeley and Oakland in 2017, the Our Beloved Community Action Network²⁶ (BCAN) leaders led by Just Cities/the Dellums Institute resolved to work together to address the removal of housing barriers for formerly incarcerated people. Through the advocacy of BCAN partner, the TechEquity Collaborative, the Chan Zuckerberg Initiative has provided resources for the development of the Alameda County Fair Chance Housing Coalition, including a leadership development program for formerly incarcerated people or their family members—the Policy and Outreach Leaders (POLs). The following community leaders have served as the POLs: Ms. Towanda Sherry, Ms. Anita Wills, Katie Dixon, and Taqwaa Bonner.

With support from Just Cities staff, the POLs have convened community forums and listening sessions with formerly incarcerated people and their family members, as well as participated in multiple research and policy design workshops. They have also worked with the UC Berkeley Goldman School of Public Policy's Center on Civility and Democratic Engagement to design and implement a survey to assess the individual, family, and community impacts of today's housing barriers for people with criminal records. In addition, Richard Illgen, former Oakland Deputy City Attorney, the Safe Return Project, and the National Housing Law Project have provided technical assistance to Just Cities and the POLs in developing the draft ordinance.

SUMMARY OF FAIR CHANCE HOUSING POLICY TERMS

The following is a summary of the proposed Fair Chance Housing policy. These policies were crafted after more than seven public hearings before the City of Berkeley's 4x4 and Land Use Committees; multiple meetings with the leaders of the Berkeley Property Owners Association; community forums with Berkeley residents and community organizations; and separate meetings with the Mayor and Council offices.

NAMED AFTER CONGRESSMAN RON DELLUMS:

The Coalition is proposing to name the Fair Chance Housing policy after former Berkeley City Councilmember, Congressman, Oakland Mayor, and world humanitarian Ronald V. Dellums in honor of his legacy and to inspire policymakers across the nation to champion human rights. Congressman Dellums passed away in July 2018. For over fifty years, Ron Dellums practiced courageous and principled leadership to advance the human rights and needs of all peoples, especially those who have

²⁶ For more information about the Our Beloved Community Action Network: <http://dellumsinstitute.org/bcan>



been discriminated against and marginalized. He was born in 1935 and grew up in a segregated West Oakland. He had a troubled youth and almost did not graduate from high school. After serving in the Marines, Ron Dellums became a UC Berkeley trained psychiatric social worker and a community organizer. At the age of 31, Ron Dellums was on his way to a PhD program at Brandeis when he was recruited by activists to serve on the Berkeley City Council.

As Berkeley City Councilmember from 1967 to 1970, Ron Dellums championed progressive values of anti-war, peace, and justice including opposition to the death penalty, development of the People's Park and opposition to the declaration of martial law by then Governor Ronald Reagan, and successfully forcing BART to put train tracks in Berkeley underground.

As Congressperson representing Berkeley and Oakland from 1970 to 1997, Ron Dellums was the first African American to represent the district and one of the first Democratic Socialists in Congress. He was elected to Congress as an anti-Vietnam War activist and a prominent member of President Nixon's infamous "enemies list." Yet, he rose to become Chair of the powerful House Armed Services Committee, while maintaining his integrity, activism, and principles. Decades ahead of the "mainstream," his initially lonely efforts against Apartheid in South Africa, and against the major nuclear war-fighting systems, all eventually became the official positions of the nation. He was a staunch critic of discrimination in the military, a key supporter of gay rights in the military, and consistently challenged the militarization of U.S. foreign policy, while advocating for improving the living conditions of military personnel. Ron Dellums also chaired the House DC Committee where he pushed for meaningful Home Rule and Statehood for the District of Columbia, and also focused on the problems in America's cities. He was equally well known for presenting comprehensive policy proposals including the Dellums Alternative Military Budget and the Congressional Black Caucus Alternative Budget. He authored comprehensive bills to provide free healthcare to all Americans, a national comprehensive housing program, and climate change legislation.

After leaving Congress, Dellums led the development of his envisioned Marshall Plan for HIV/AIDs resulting in the federal PEPFAR programs which has saved 17 million lives in Sub-Saharan Africa, and the Dellums Commission on Boys and Men of Color, the precursor to President Obama's My Brother's Keeper initiative.

Already in his 70s, Ron Dellums was drafted to serve as Mayor of Oakland from 2007 to 2010, where he opened up City Hall for Oakland's people to develop Oakland as a model city for the world. To institutionalize civic engagement, Ron Dellums created 41 Citizen Task Forces that involved over 800 residents and resulted in policy changes such as the adoption of an industrial lands policy to facilitate economic development and jobs for Oakland residents and strategies to improve air quality from Port operations. He created a Re-Entry Services program out of the Mayor's office that welcomed formerly incarcerated residents home and helped them find jobs, housing, and support. Ron Dellums developed a comprehensive public safety plan which resulted in a 38% decline in homicides and a 25% decline in

all Part I (major) crimes. He reformed the Oakland Police Department and advanced community and constitutional policing. He led unprecedented City efforts involving business, labor, education, and community leaders to develop a comprehensive vision for a sustainable and equitable local economy, which resulted in \$550 million of new funding for projects and the generation of over 14,000 jobs during the Great Recession.

In 2016, at the tender age of 80, Ron Dellums co-founded the Dellums Institute for Social Justice to create a platform for the collective advancement of racial and social justice.

By naming the Fair Chance Housing Ordinance after Ronald V. Dellums, we seek to inspire community youth to believe in their potential for greatness and government officials to lead with courage, integrity, compassion for the most marginalized, and big vision for justice.

POLICY GOALS:

1. Remove current structural barriers faced by formerly incarcerated people when they apply for private or publicly subsidized housing to enable them to be considered on the merits of their present situation, rather than the albatross of their past.
2. Create a due process system that a) enables formerly incarcerated people the ability to complain to the City and also sue to enforce their rights under the Ordinance; and b) builds on the City's current administrative systems and capacity.
3. Design policy terms based upon an understanding of the different application and review processes by private and multiple kinds of Affordable Housing providers.
4. Create reporting requirements that are streamlined and also helps Affordable Housing providers transform their current application and review systems.
5. Avoid unintended consequences by not having burdensome or complex requirements for landlords.
6. Address the realities and special considerations of landlords who reside on their rental property that are smaller buildings, e.g. triplexes and smaller.

MAIN PROPOSED POLICY TERMS:

The following is a summary of the proposed fair chance housing policy.

| Housing Provider | Criminal Background Check | Due Process | Reporting to City | Potential Remedies for Violations |
|---|--|--------------------------------|------------------------------------|---|
| Private (Non-Affordable Housing Provider) | No | City Complaint or Sue in Court | None | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| Publicly Subsidized & Not HUD Funded | No | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |
| HUD Funded | Following due process protections, can check on 2 crimes per HUD rules | City Complaint or Sue in Court | Annual certification of compliance | City complaint w/ fine. Court action w/ damages or injunctive relief. |

CRIMINAL BACKGROUND CHECKS:

The proposed ordinance prohibits ALL landlords from:

- (a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,
- (b) Asking about or requiring disclosure of someone's criminal history, or
- (c) Taking adverse action against an applicant or tenant based on his or her criminal history.

Exemptions to the ordinance:

- The following properties where the owner occupies the property are exempt from the ordinance: ADUs, single family homes, duplexes, and triplexes.
- Property owners renting their primary dwelling when they are on sabbatical.
- Tenants renting out available bedrooms in the unit in which they reside.
- Pursuant to State law, landlords can review and consider whether an applicant is on the State operated registry of lifetime sex offenders after a conditional offer has been made and upon written consent from the applicant. If a housing denial is based upon the registry information, the landlord must provide that information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.
- Landlords of HUD funded housing have a partial exemption from the ordinance if they are complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history (lifetime sex offender registration requirement or manufacturing meth on a federally assisted housing property). However, the landlord can only conduct the background check upon written consent from the applicant. If a housing denial is based upon one of the two HUD prescribed crimes, the landlord must provide the background check information to the applicant and provide the applicant with the opportunity to rebut or provide mitigating information.



IMPLEMENTATION & ENFORCEMENT:

1. Private Rental Housing Application & Complaint Process

- Denial: If an applicant has been denied housing, they are entitled to any notices required by state and federal law and can also request that the landlord provide a reason for the denial.
- Due Process, Remedies & Enforcement—See below

2. Affordable Housing Rental Housing Application and Appeal/Complaint Process

- Definition: any housing provider receiving direct local, county, state, or federal subsidy. We have removed Section 8 landlords from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders and because of Berkeley's source of income anti-discrimination law.
- Background Check, Denial, and Due Process Protections: For HUD funded housing providers, the housing provider may conduct a criminal background check if required by federal requirements. The housing provider must ensure that the applicant provided prior written consent to the criminal background check, receive a copy of any criminal background check, and has the opportunity to respond with rebutting or mitigating information before the applicant is denied housing.
- Annual Reports: only publicly subsidized housing providers would submit an annual certification of compliance to the City utilizing a City template. The Coalition would like to work with the City on designing the compliance template.

3. Due Process, Remedies and Enforcement for Both Private & Publicly Subsidized Rental Housing

○ Complaint Process:

- The applicant would have the right to file a complaint with the City Manager's designated hearing officer within one year from the date of application for housing.
- The public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence.
- Similar to current local tenant law, private right of action and attorney's fees for the prevailing applicant are provided.
- Berkeley's current administrative penalty system is also integrated into the proposal.



- Landlord retaliation is explicitly prohibited.
- Landlords are required to maintain documentation of any conviction history that they obtain on applicants for at least three years.
- Effective date of the ordinance is 6 months after its adoption.
- The City Manager or their designee would provide an annual status report to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information.

CONCLUSION

In the words of Just Cities' Director of Community & Political Engagement, John Arthur Jones III,

The only place in America where one is guaranteed a roof over their head is in prison/jail.

This Ordinance will take steps towards addressing the major intersection of Mass Incarceration and Housing barriers- BOTH resulting from policies and programs that were created and/or sanctioned by government- locally, statewide and nationally. In addition to constituting a human right, housing is also a Public Health and Public Safety issue. The impact of having a criminal record severely harms and impacts those who have never been arrested, including the children, parents, partners, and loved ones of those who are formerly incarcerated. Just as criminal records cannot and does not strip one of the legal duty of paying taxes, neither legally should having a criminal record strip anyone of one of the most quintessential elements of human rights- and that is housing.

