

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
REQUIRING PROVIDERS OF PUBLIC OR SUBSIDIZED HOUSING TO
ENSURE EQUAL OPPORTUNITY FOR HOUSING APPLICANTS WITH
PAST CRIMINAL CONVICTIONS

The Council of the City of Richmond do ordain as follows:

Section I. Amendment of Article VII of the Richmond Municipal Code

Article VII of the Municipal Code of the City of Richmond is hereby amended to add Chapter 7.110. Chapter 7.110 shall read as follows:

Chapter 7.110

FAIR CHANCE ACCESS TO AFFORDABLE HOUSING

Sections:

- 7.110.010 Title**
- 7.110.020 Authority**
- 7.110.030 Findings**
- 7.110.040 Procedure for Use of Criminal History Information in Housing Decisions**
- 7.110.050 Professional Audit Advisory Committee**
- 7.110.060 Notice and Posting Requirements for Housing Providers**
- 7.110.070 Implementation and Enforcement**
- 7.110.080 Records to Be Maintained**
- 7.110.090 Confidentiality**

7.110.010 Title

This Ordinance shall be known as the “Fair Chance Access to Affordable Housing Ordinance”.

7.110.020 Authority

This Ordinance is adopted pursuant to the powers vested in the City of Richmond under the laws and Constitution of the State of California and the City Charter.

7.110.030 Findings

- (a) The City of Richmond is committed to equity, dignity, and public health.

- (b) The unmet housing needs of formerly incarcerated people in Richmond are an acute challenge to the dignity, public health, and equal opportunity for this population and the broader community.
- (c) A survey of 100 formerly incarcerated Richmond residents found that only fifty-three percent (53%) had stable housing three to eighteen months after their release.
- (d) Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration.
- (e) Several cities, including Urbana, Illinois; Madison, Wisconsin; New York, New York; San Francisco, California; Newark, New Jersey; and Seattle, Washington have passed policies that restore rights and remove barriers to housing for people with past criminal convictions.
- (f) 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.”
- (g) It has been documented by service providers providing assistance to formerly incarcerated residents in Richmond and national researchers that significant first source housing for people coming out of incarceration is publicly subsidized affordable housing. {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”). }
- (h) Richmond service providers and national researchers have documented barriers to access to publicly subsidized affordable housing faced by formerly incarcerated residents. {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”). }
- (i) The City of Richmond General Plan states in the Health and Wellness Element under Policy HW8.4 Inmate Re-Entry and Transition that a goal of the city is to “Support re-entry, transition and integration of former prison inmates and parolees into the community.”
- (j) The City’s Health in All Policies Strategy states that “through a targeted and concerted effort across all city departments, we can make an impact on reducing and eliminating many preventable stressors while at the same time enhancing the many assets and resources that already exist in Richmond to support human health.”

- (k) Homelessness is a critical issue in Richmond, and formerly incarcerated people are disproportionately affected by homelessness.
- (l) Not having a home can prevent a formerly incarcerated person from getting a job, from visiting with his or her children, and from fulfilling other needs that are fundamental to reintegrating with community after incarceration.
- (m) Mass incarceration is a national crisis, and restoring the rights of people affected by mass incarceration is a national priority.
- (n) The United States incarcerates more than twenty-five percent (25%) of the world's prisoners while the country comprises only five percent (5%) of the world's population.
- (o) The City of Richmond has shown a consistent interest in removing barriers faced by people coming home from incarceration, by helping establish the Reentry Success Center and adopting policies like the city's "Ban the Box" ordinance (14-13 N. S.), which removed barriers to employment.
- (p) The City of Richmond, primarily through the Richmond Housing Authority, owns, manages, and/or subsidizes various types of publicly subsidized housing, including Project-based Section 8 units, Section 202 senior housing, Public Housing units, tax-credit financed affordable housing, and housing rented with Section 8 vouchers.
- (q) Formerly incarcerated Richmond residents have done extensive research, community engagement, and program and policy development.
- (r) Research and community engagement by the Safe Return Project has identified a policy gap in the city's treatment of housing providers and their consideration of past convictions that has generated unfair and harmful barriers to housing for people with past convictions.

7.110.040 Definitions

For the purposes of this Article, the following words and phrases shall mean and include:

- (a) "Adverse Action" in the context of housing shall mean to evict, fail or refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or to reduce any tenant subsidy. The adverse action must relate to real property in Richmond.
- (b) "Affordable housing" means any residential building in Richmond that has received City, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing housing for extremely low income, very low income, low income, and moderate income households.
- (c) "Appeal Hearing Body" shall mean a body authorized by the City Manager or City Council to receive and decide on appeals related to this ordinance and determine any corrective action.

- (d) “Arrest” shall mean a record from any jurisdiction that does not result in a conviction and includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, or tried and acquitted for any felony, misdemeanor or other criminal offense.
- (e) “Background Check Report” shall mean any criminal history report, including but not limited to those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or by any consumer reporting or tenant screening agency.
- (f) “Conviction” shall mean a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor, provided that the conviction is one for which the person has been placed on probation, fined, imprisoned or paroled.
- (g) “Conviction History” shall mean information regarding one or more convictions or unresolved arrests, transmitted orally or in writing or by any other means, and obtained from any source, including but not limited to the individual to whom the information pertains and a Background Check Report.
- (h) “Directly-Related Conviction” shall mean that the conduct for which the person was convicted has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing, and includes one or more of the following: any conviction where state or federal law prohibits the applicant from being eligible for the public housing; any conviction for a crime carried out in the applicant’s home or on the premises where the applicant lived; or any conviction that leads to the applicant becoming a lifetime registered sex offender.
- (i) “Evidence Of Rehabilitation or Other Mitigating Factors” may include, but is not limited to, a person’s satisfactory compliance with all terms and conditions of parole and/or probation; employer recommendations; educational attainment or vocational or professional training since the conviction; completion or active participation in rehabilitative treatment; and letters of recommendation from community organizations, counselors or case managers, teachers, community leaders or parole/probation officers who have observed the applicant since his or her conviction; and the age of person at the time of the conviction. Successful completion of parole, probation, mandatory supervision, or Post Release Community Supervision shall create a presumption of rehabilitation.
- (j) “Housing Provider” shall mean any entity 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 entities shall also be considered a “Housing Provider.”
- (k) “Inquire” shall mean any direct or indirect conduct intended to gather information from or about an applicant, candidate potential applicant or candidate, or employee, using any mode of communication, including but not limited to application forms, interviews, and background check reports.

7.110.050 Procedures for Use of Criminal History Information in Housing Decisions

- (a) Regarding applicants and individuals applying to be added to a lease for Affordable Housing, and their household members, a Housing Provider shall not, at any time or by any means, inquire about, require disclosure of, or if such information is received, base an Adverse Action in whole or in part on:
 - (1) An Arrest not leading to a Conviction;
 - (2) Participation in or completion of a diversion or a deferral of judgment program;
 - (3) A Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative, by way of example but not limitation, under California Penal Code §§ 1203.4 or 1203.4a, or 1203.1.
 - (4) A Conviction or any other determination or adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system;
 - (5) A Conviction that is more than two years old, the date of the Conviction being the date of sentencing; or
 - (6) Information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

- (b) The Housing Provider shall not require applicants, and individuals applying to be added to an existing lease, for Affordable Housing to disclose on any housing application the fact or details of any Conviction History or any matter identified in subsections (a)(1)-(6) above. Nor shall the Housing Provider inquire on any housing application about the fact or details of any Conviction History or any matter identified in subsections (a)(1)-(6) above.

- (c) The Housing Provider shall not require applicants, and individuals applying to be added to an existing lease, for Affordable Housing to disclose, and shall not inquire into, Conviction History until the Housing Provider has first:
 - (1) Determined that the applicant is qualified to rent the housing unit under all of the Housing Provider's criteria for assessing applicants except for criteria related to potential past criminal convictions; and
 - (2) Provided to the applicant a conditional lease agreement that commits the unit to the applicant as long as the applicant passes the Conviction History review.

- (d) If and when the Housing Provider requests written consent from the applicant to obtain a background check record of Conviction History, the Housing Provider must also request consent to share the Conviction History record with the applicant and with the City of Richmond (for the purposes of an appeal only), and must offer the applicant an opportunity to provide Evidence of Rehabilitation or Other Mitigating Factors related to convictions within the previous two years.

- (e) In reviewing Conviction History and making a decision related to Affordable Housing based on Conviction History, a Housing Provider shall conduct an individualized assessment, considering only convictions that warrant denial based on state and federal law, and considering the time that has elapsed since the Conviction, whether it

is a Directly-Related Conviction, and any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

- (f) If a Housing Provider intends to base an Adverse Action related to Affordable Housing on an applicant's or household member's Conviction History, prior to the Adverse Action, the Housing Provider must follow the following steps:
- (1) Notify the applicant of the prospective Adverse Action, providing in written form the following:
 - a. The type of housing sought;
 - b. A copy of the background check;
 - c. For each item of criminal history relied upon, why the Housing Provider believes it has a direct and specific negative bearing on the landlord's ability to fulfill his or her duty to protect the public and other tenants from foreseeable harm;
 - d. What bearing, if any, the time that has elapsed since the applicant's or household member's last offense has on the Housing Provider's decision;
 - e. What evidence the Housing Provider has received from the applicant or household member that shows rehabilitation or mitigation;
 - f. The name and telephone number of the city staff member who the applicant may contact if he or she believes the Housing Provider has violated this Ordinance.
 - (2) Within fourteen (14) calendar days of receiving the notice and Background Check report, the applicant can file for an appeal with the Appeal Hearing Officer. If the applicant files for an appeal, he or she must notify the Housing Provider during the same 14 day period. If the applicant does not file an appeal within 14 days, the Housing Provider can carry out the Adverse Action.
 - (3) Upon receiving an appeal application, the Appeal Hearing Officer must hold a hearing and decide whether to uphold the Housing Provider's decision within ten (10) calendar days of receiving an appeal application.
 - (4) The Housing Provider shall delay any Adverse Action and shall hold the unit open during the time of the appeals process.

7.110.060 Notice and Posting Requirements for Housing Providers

- (a) The Housing Provider shall state in all solicitations or advertisements for the rental or lease of Affordable Housing or on behalf of the Housing Provider that the Housing Provider will consider for tenancy qualified applicants with Conviction History in a manner consistent with the requirements of this Ordinance.
- (b) It shall be unlawful for any Housing Provider to produce or disseminate any advertisement related to Affordable Housing that expresses, directly or indirectly, that any person with an arrest or conviction record will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by local, state, or federal law.
- (c) 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 suitable for posting that informs applicants for Affordable Housing of their rights under this Ordinance.

(d) Housing Providers shall post the notice prominently on their website and at any location under their control that is frequently visited by applicants or potential applicants for the rental or lease of Affordable Housing in Richmond. The notice shall contain the following information:

- (1) A description of those parts of a Conviction History that may not be considered by the Housing Provider under any circumstances (e.g., convictions older than two years);
- (2) A description of the restrictions and requirements of this Act;
- (3) The definition of Evidence of Rehabilitation and Other Mitigating Factors and the timeline under which the applicant or potential applicant has a right to provide such evidence;
- (4) How an individual may report a violation of this Ordinance.

7.110.070 Implementation and Enforcement

- (a) The Ordinance will take effect six months from the date of the passage of the Ordinance. In the six month time period prior to implementation, Housing Providers are required to draft and publish written policies for implementation of the Ordinance.
- (b) The requirements of this ordinance will apply to all new and existing Affordable Housing in the City. The terms of the ordinance will be incorporated into all new and existing contracts between the Housing Provider and the city, state or federal entity providing the subsidy.
- (c) Within six months of the Ordinance's passage, the City Manager is required to identify the Appeal Hearing Officer and staffing for the appeal process, develop notices and other implementation documents, conduct outreach to Housing Providers, an annual budget and funding sources, a penalty system for addressing violations of the Ordinance, and other elements of effective implementation.
- (d) The appeal hearing process shall include the submission of documents from the Housing Provider on why housing was denied to the applicant/appellant to both the Appeal Hearing Officer and the applicant/appellant at least five (5) calendar days prior to the Appeal Hearing. The Housing Provider shall explain the decision with enough specificity for the applicant/appellant to rebut the decision. In addition, the applicant/appellant shall have the right to have an Advocate of their choosing to represent the applicant/appellant at the hearing and may present any relevant witnesses and evidence. Evidence will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding. Both the applicant/appellant and the Housing Provider shall be allowed to examine the other party's evidence and to rebut and cross examine the witnesses. Both parties shall also have the opportunity to request a translator and to request any reasonable accommodation needed to participate in the hearing process. Both parties shall also have the right to record the hearing.
- (e) Prior to implementation, Housing Providers are required to provide a written policy of their selection criteria, process, and the appeal process to all tenants.
- (f) The City is required to take appropriate steps to enforce this article and coordinate enforcement, including the investigation of any possible violations of this article. The City may find a violation of this article including that the Housing Provider failed to conduct the individualized assessment.

- (g) The City Manager shall provide quarterly public reports to the City Council on Ordinance implementation including information for each Housing Provider that includes the number and demographics for applicants for available Affordable Housing and, for applicants that were denied, information pertaining to their race, ethnicity, gender, income level, and household type. The information provided for each Housing Provider shall also include the number of leases signed and the number and basis of applicant denials for denials based upon Conviction History. The quarterly reports shall also include information on the number of notices filed with the City regarding private court action and the outcome of the court proceedings.
- (h) Where the City's Appeal Hearing Officer determines that a violation of the Ordinance occurred, the City's Appeal Hearing Officer may issue a determination and order any appropriate relief under this Ordinance.
- (i) After the conclusion of the appeal process, if the appellant retains a private attorney to pursue litigation of the matter, the private attorney who represents the appellant in litigation against the Housing Provider shall provide notice to the City and the Appeal Hearing Officer within ten (10) calendar days of filing court action against the Housing Provider, and inform the City and the Appeal Hearing Officer of the outcome of the court action within ten (10) calendar days of any final judgment.

7.110.080 Records to Be Maintained

- (a)The Housing Provider shall maintain all records required by federal regulations including those specified in 24 CFR §570.506 that are pertinent to the implementation and enforcement of this Ordinance.
- (b)In addition, the Housing Provider must maintain a record for each applicant, participant and beneficiary of their program including, any criminal background check, and determination of eligibility following the Housing Provider's review of the criminal background check.
- (c)In the case that an applicant is denied housing after receiving a conditional lease, the Housing Provider is required to provide access to the applicant's file upon request, including the criminal background check document, for either personal review or to file an appeal.
- (d)The Housing Provider shall maintain full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Ordinance.
- (e)The Housing Provider shall
 - (1) Permit the City to have access to Housing Provider records for the purpose of making an audit, examination or review of performance data pertaining to this Ordinance; and
 - (2) Maintain such records for a period of three years.

7.110.090 Confidentiality

To the fullest extent permitted by law, any information pertaining to an applicant's criminal history obtained in conjunction with the rental, lease, ownership, or sublease process

- (a)Shall remain confidential;

(b) Shall only be shared with the applicant, the Housing Provider, and the Appeal Hearing Officer.

Section II. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section III. Effective Date. This Ordinance becomes effective six (6) months after its final passage and adoption.

First read at a regular meeting of the Council of the City of Richmond, California, held _____, and finally passed and adopted at a regular meeting thereof held _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

Clerk of the City of Richmond
(SEAL)

Approved:

Mayor

Approved as to form:

City Attorney