

Board of Supervisors Unincorporated Services Committee
Staff Report

Fair Chance Ordinance

May 25, 2022

Background

In 2020, the Community Development Agency's (CDA) Housing and Community Development Department (HCD) began its work to explore possible tenant protection ordinances in the Unincorporated County when it received the Partnership for the Bay's Future Challenge Grant.

The Fair Chance Ordinance (Ordinance) before your Committee today is the second in a series of tenant protection ordinances that will be brought for consideration and recommendation to the full Board of Supervisors. The first was the Proactive Rental Inspection and Rental Registry Ordinance that was considered by your Committee on March 23, 2022.

Draft Proposed Ordinance

The proposed Ordinance is attached as Appendix A.

The purposes of the Ordinance are to:

1. Increase housing access for formerly incarcerated individuals and their family.
2. Reduce 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 a fair opportunity to reclaim their lives and effectively reintegrate into the Unincorporated County.

The key aspects of the Ordinance are outlined below:

1. **Disclosure of Criminal History.** Housing providers cannot ask about an applicant's criminal history or require disclosure of criminal history. Housing providers can comply with federal or state laws that require automatic exclusion based on certain types of criminal history.

2. **State Lifetime Sex Offender Registry.** Housing Providers May Review State Registry of Lifetime Sex Offenders. Housing providers may only do so if the provider informs the applicant of this review, has determined that the applicant is qualified to rent the housing, provided the applicant a conditional rental agreement, and informed the applicant that the provider will be checking the registry.

4. **Family Members.** Close family members of an occupying tenant must be allowed to occupy a rental unit, regardless of criminal history.

3. **Advertisements.** Housing Providers Cannot Advertise that Applicants with Criminal History may not Apply for Housing.

Recommendation

Staff recommends the Unincorporated Services Committee:

1. Take public testimony, and
2. Recommend approval of the draft proposed Ordinance to the Board of Supervisors.

APPENDIX A: Proposed Ordinance.

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ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 6.25 OF THE ALAMEDA COUNTY ORDINANCE CODE REGARDING PROHIBITING CONSIDERATION OF CRIMINAL HISTORIES IN SCREENING APPLICATIONS FOR RENTAL HOUSING

The Board of Supervisors of the County of Alameda, State of California, does ordain as follows:

SECTION 1

1. The Board of Supervisors of the County recognizes that mass incarceration is a national and local crisis and restoring the rights of people affected by mass incarceration is a national priority and local priority.
2. The U.S. Department of Justice has estimated one in every three adults in the United States has either an arrest or conviction record.
3. Studies have found that private criminal databases 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.
4. 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.
5. In 2016, the DOJ found that an estimated 32% of records in state criminal history repositories were missing final disposition data. This lack of final disposition data results in misleading reports because, for example, arrests are routinely listed even when the charges were eventually dropped, reduced, or disproven in court.
6. According to a 2013 National Employment Law Project (NELP) report, “one third of felony arrests do not result in conviction and many others are reduced to misdemeanors.” While industry-wide data on the inaccuracies of commercial criminal background reports are unavailable, NELP estimates that 1.8 million workers are subject to FBI checks that include faulty or incomplete information each year.
7. Formerly incarcerated persons face barriers to access to both private rental and publicly subsidized affordable housing. A 2019 Goldman School and Just Cities survey which interviewed formerly incarcerated persons in Alameda County found that many were denied rental housing due to their incarceration record and could not stay in public housing with a relative or family member due to public housing rules.
8. Homelessness is a critical issue in Alameda County 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,

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and from fulfilling other needs that are fundamental to reintegrating with the community after incarceration.

9. A local survey project co-led by Just Cities, the Village, and the Goldman School of Public Policy found that 73% of unhoused residents interviewed in Oakland's encampments were formerly incarcerated. According to a 2018 Prison Policy Initiative report, at the national level, formerly incarcerated people are 10 times more likely to experience homelessness than the general public.
10. The unmet housing needs of formerly incarcerated people in Alameda County are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community.
11. Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration. A 2012 Urban Institute study in Ohio, and a 2017 study published in the Journal of Experimental Criminology in Maryland found that providing housing subsidies to recently released persons significantly reduced the chance of re-arrest during the first year after release in these jurisdictions. A 2002 government study conducted in the United Kingdom by the U.K Office of the Prime Minister found that stable housing was associated with a 20% reduction in the chance of being reconvicted in the first year after release.
12. Reliance on criminal history to select tenants impedes formerly incarcerated persons from gaining access to housing in Alameda County, to the detriment of health, welfare, and public safety of the County's residents.

SECTION II

Chapter 6.25 is hereby added to the Alameda County Ordinance Code and reads as follows:

6.25.010 Title, Findings and Purpose

This chapter shall be known as the "Fair Chance Housing Ordinance".

According to the Justice Reinvestment Coalition, 1 in 4 (375,000) residents of Alameda County have a criminal record. Within the county, probationers and parolees are concentrated in lower income neighborhoods of Oakland and Hayward. According to the Alameda County Reentry Strategic Plan (2013), "Neighborhoods like South Hayward, Ashland/Cherryland, and both East and West Oakland have substantially higher densities of formerly incarcerated people than other parts of the county." Here in Alameda County, 48% of probationers are African American even though African Americans make up only 11% of the population (US Census, Alameda County July 2018). According to the Prison Policy Initiative, nationwide, formerly incarcerated people are also 10 times more likely to experience homelessness than the general public. A study by Just Cities,

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The Village, and the UC Berkeley Goldman School of Public Policy found that 73% of unhoused residents interviewed in Oakland’s encampments were formerly incarcerated.

The purpose of this chapter is to create a Fair Chance Housing Ordinance to serve the residents of the unincorporated areas of Alameda County to help address the disparate impacts of mass incarceration and the homelessness crisis in the unincorporated areas of Alameda County and provide fair opportunity to the thousands of formerly incarcerated people seeking housing and their households.

6.25.020 Definitions

“Affordable Housing” shall mean any Housing that (1) has received or is receiving 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 Housing Choice Voucher Program (42 U.S.C. Section 1437f); or (2) is subject to affordability and related requirements pursuant to any County below market-rate rental housing programs, including but not limited to the State Density Bonus law (California Government Code Sections 65915-65918 and chapter 23C.14).

"Affordable Housing Provider" shall mean any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the County. 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 Housing Authority of the County of Alameda, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f), shall also be considered an “Affordable Housing Provider.”

“Aggrieved Person” means any of the following:

1. Applicant who believes they were subject to a noncompliant action;
2. A tenant who believes they or their Close Family Member was subject to a Noncompliant Action based on the application of an Applicant to reside in such family member’s rental unit;
3. a tenant who believes they were subject to a Noncompliant 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.

"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 Program (42 U.S.C. Section

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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.

“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, or tried and acquitted for any felony, misdemeanor, or other criminal offense.

“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.

“Close Family Member” means a spouse, registered domestic partner, child, sibling, half-sibling, parent, step-parent, foster parent, grandparent, or grandchild.

“Conviction” means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor or other criminal offense and for which the person was placed on probation, fined, imprisoned, and/or paroled.

“Covered Individual” means a residential tenant or an Applicant to become a residential tenant who has a Criminal History or who has a Close Family Member with a Criminal History who resides or intends to reside in the same residential unit.

“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, a Background Check Report, or a reference from a former Housing Provider regarding one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, 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.

“Housing” means any residential rental housing, building, or unit—including permitted and unpermitted units in the unincorporated areas of Alameda County, with the exception of the following:

1. Single family dwellings where one or more owners occupies the dwelling as their principal residence;
2. Single family dwellings with Accessory Dwelling Units, as defined in Alameda County code title 17 zoning chapter 17.04.010 definition where either the main or an accessory dwelling Unit is occupied by one or more owners as their principal residence;

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3. Duplexes or triplexes where one of the units is occupied by one or more owners as their principal residence;
4. 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.

“Housing Provider” shall mean any Person that owns, master leases, manages, or develops Housing in the County. 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 Housing Authority of the County of Alameda, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f), shall also be considered a “Housing Provider”.

“Noncompliant Action” means to take one of the following actions based on a Covered Individual Criminal History or an Arrest and or Conviction History:

1. Failing or refusing to rent or lease Housing to Covered Individual;
2. Failing or refusing to continue to rent or lease Housing to a Covered Individual;
3. Reducing the amount or term of any Covered Individual 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 Covered Individual as ineligible for a tenant-based rental assistance program, including but not limited to, the Section 8 Housing Choice Voucher Program (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.

“Person” shall mean 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 County.

6.25.030 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 a Noncompliant Action in whole or in part on an Applicant’s Criminal History.

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- 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.
1. Any Noncompliant 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), the Housing Provider may review the State registry of lifetime sex offenders operated by the State of California Department of Justice; provided 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 not 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 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 be checking the sex offender registry 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 County of Alameda for purposes of enforcing the requirements of this chapter.

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- E. If any Noncompliant 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 Noncompliant Action that includes, at a minimum, the reason(s) for the Noncompliant Action, instructions on how to file a complaint about the Noncompliant Action with the County, and a copy of any Background Check Report or other information related to the Applicant's Criminal History that served as a basis for the Noncompliant Action. The Housing Provider shall provide the Applicant a reasonable opportunity to respond with rebutting or mitigating information prior to the denial of the Applicant's housing application. The Housing Provider shall not require reimbursement or payment from the Applicant for the cost of providing any information required under this Paragraph.

6.25.040 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, 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, except as required by State or Federal law.
- B. The County shall publish and make available to Housing Providers, in English, Spanish, and all languages spoken by more than five percent (5%) of the Unincorporated County'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 County 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 Noncompliant Action a written notice regarding the Noncompliant Action that includes, at a minimum, the reason(s) for the Noncompliant Action; instructions regarding how to file a complaint about the Noncompliant Action with the County, 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

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Check Report or other Criminal History obtained by the Affordable Housing Provider; and

2. Submit to the County an annual certificate of compliance with the requirements of this chapter in the form provided by the County.

6.25.050 Retaliation Prohibited

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

6.25.060 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 County to provide records for purposes of enforcing the requirements of this chapter.

6.25.070 Implementation

- A. The County Housing and Community Development Department is authorized to 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 County Housing and Community Development Department is authorized to adopt administrative regulations and forms necessary to implement the requirements of this chapter.

6.25.090 Enforcement

- A. The County Counsel may bring an action on behalf of the County seeking injunctive relief to restrain or enjoin any violation of this chapter.
- B. 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 general or special damages, or statutory damages up to three times the amount of one

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month's rent that the Housing Provider charged for the unit in question at the time of the violation. In addition to general or special or statutory damages, a court may award punitive damages pursuant to standards set by state law. In any action brought under this chapter, the Court may award reasonable attorneys' fees and cost of action to the prevailing Aggrieved Party. The right to file an action under this Paragraph is independent of the right to file an administrative complaint under Section 6.25.080 and does not require an Applicant to have filed a prior complaint with the County or take any administrative or other action to exhaust administrative remedies.

- C. When permitted by law, an award of general damages under this chapter may include an award for mental and/or emotional distress and/or suffering. The amount of general damages awarded to a prevailing plaintiff may 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.
- D. In an action brought by the County Counsel 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 Alameda County. The civil penalty assessed against a Housing Provider shall be up to one thousand dollars (\$1,000) for each violation of this chapter. Each day a violation continues uncorrected is a separate violation to a maximum of ten days. A defendant shall be liable for an additional civil penalty of up to one thousand (\$1,000) 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.
- E. An attorney who represents an Applicant in litigation against a Housing Provider brought under this chapter shall provide notice to the County within ten (10) days of filing court action against the Housing Provider and inform the County of the outcome of the court action within ten (10) days of any final judgment.

6.25.100 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 chapter, federal or state law shall control.

6.25.110 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 Alameda County Board of Supervisors hereby declares that it would have

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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.

6.25.120 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 County regarding a violation of the Ordinance.

6.25.130 Notice to Housing Providers

The County Administrator or its designee 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. Not receiving a notice does not constitute a defense against violation of this chapter.

6.25.140 Posting

Copies of this Ordinance shall be posted for two days prior to adoption in _____. Within 15 days of adoption, copies of this Ordinance shall be filed at _____ and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Alameda County Board of Supervisors held on _____, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes:

Noes:

Absent: