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2020 JAN -2 PM 1:06

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Barbara J. Parker
City Attorney

SUBJECT: Fair Chance Housing Ordinance

DATE: January 2, 2020

RECOMMENDATION

City Attorney Barbara J. Parker, Vice Mayor Larry Reid, Councilmember Nikki Fortunato Bas, and Council President Pro Tempore Dan Kalb Recommend that the City Council Adopt the Following Legislation:

FAIR CHANCE HOUSING ORDINANCE ADDING OAKLAND MUNICIPAL CODE CHAPTER 8.25 PROHIBITING CONSIDERATION OF CRIMINAL HISTORIES IN SCREENING APPLICATIONS FOR RENTAL HOUSING

EXECUTIVE SUMMARY

Formerly incarcerated people experience significant barriers beyond the high cost of rent in seeking rental housing. They are routinely screened out when they apply to rent housing due to criminal background checks in private rental, nonprofit affordable housing, and public housing units. In addition, living with family members is not always an option because many rental agreements prohibit people with criminal histories from residing in the units. For these reasons, a number of cities have adopted Fair Chance Housing legislation including, but not limited to, Seattle, Washington, Portland, Oregon, and Richmond, California.

The proposed Oakland Fair Chance Housing Ordinance would prohibit inquiries by owners of covered units about and/or use of criminal histories in determining eligibility to rent housing. The Ordinance also bans advertising language that excludes people with criminal backgrounds.

The purposes of the Ordinance are: (1) to increase access to housing for formerly incarcerated individuals and their family members; (2) to reduce the homelessness and family separation that result from blanket exclusion of housing applicants based solely on criminal background checks; (3) to reduce recidivism by removing structural barriers to stable housing; and (4) to provide formerly incarcerated people with a fair opportunity to reclaim their lives and effectively reintegrate into the Oakland community.

The Fair Chance Housing Ordinance builds upon City of Oakland and national efforts to remove structural barriers for formerly incarcerated people to effectively re-enter society. For example, the City of Oakland's 2010 Ban the Box employment policy's goal is to remove employment barriers for formerly incarcerated people.

BACKGROUND

The status quo of blanket, structural, and arbitrary exclusion of formerly incarcerated people from the fundamental human need and right to housing is untenable; and it is counterproductive to our society's stated goal of reducing recidivism and re-integrating formerly incarcerated people into our communities.

CRIMINAL BACKGROUND DATABASE SYSTEMS ARE INACCURATE AND MISLEADING

Research conducted by Just Cities,¹ an Oakland-based organization dedicated to restorative justice, shows that government repositories of criminal records are routinely incomplete. As a result, commercial criminal background reports, which rely on government data, are inaccurate and/or misleading. For example, 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.² In 2016, the DOJ found that an estimated 32% of records in state criminal history repositories were missing final disposition data.³ 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. 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." 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.⁴

The lack of accurate disposition data is just one of many issues undermining the accuracy of private criminal background reports. According to a review by the National Consumer Law Center, other pervasive flaws include: the publication of sealed or expunged records; the misclassification of crimes (e.g. reporting a misdemeanor as a felony); the assignment of records to an unrelated individual with the same or a similar name, 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).⁵

IMPACTS OF HOUSING BARRIERS ON PEOPLE WITH CRIMINAL RECORDS

Researchers have documented barriers to both private and public housing faced by formerly incarcerated persons.⁶ A 2019 Goldman School and Just Cities survey and interviews of 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.⁷

¹ Formerly the Dellums Institute for Social Justice.

² U.S. Department of Justice. (2006). *The Attorney General's Report on Criminal History Background Checks*, p. 3.

³ National Consortium of Justice Statistics. (2018). *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, p. 2.

⁴ National Employment Law Project. (2013). *Wanted: Accurate FBI Background Checks for Employment*, pp. 1-2.

⁵ National Consumer Law Center. (2012). *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, p. 15.

⁶ Carey, Corinne. (2004). "No Second Chance: People with Criminal Records Denied Access to Public Housing." *University of Toledo Law Review*, 36, pp. 545-94. Center for Law and Social Policy and Community Legal Services. (2002). *Every Door Closed: Barriers Facing Parents with Criminal Records*, Ch. 3. Urban Institute. (2004). *Taking Stock: Housing, Homelessness, and Prisoner Re-Entry*.

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*, p. 23. Report for Just Cities and Goldman School of Public Policy.

As the state with the second highest population of people currently in prison or jail in the country,⁸ California cannot afford to continue to allow the rampant exclusion of formerly incarcerated people from rental housing.

Alameda County has a total of 7,900 people on probation or parole, with over 3,900 of them living in Oakland alone.⁹ Moreover, since persons paroled from incarceration are generally returned to their county of residence (CA Penal Code 3003), these individuals are our own community members who have come home.

Research has shown that access to stable and affordable housing enables people to successfully re-integrate into society. For example, studies in Ohio¹⁰ and Maryland¹¹ found that providing housing subsidies to recently released persons significantly reduced the chance of re-arrest during the first year after release. A government study conducted in the United Kingdom found that stable housing was associated with a 20% reduction in the chance of being reconvicted in the first year after release.¹²

Extensive research also shows the direct link between incarceration history, homelessness, and health.¹³ For example, a recent local survey project found that **73% of unhoused residents interviewed in Oakland's encampments were formerly incarcerated.**¹⁴

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

RACIAL DISPARITIES IN ARRESTS, PROSECUTION, CONVICTION, AND INCARCERATION PERPETUATE RACIAL DISPARITIES IN ACCESS TO HOUSING

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

⁸ See the Sentencing Project's data on the total population of people in prison in 2016. California is second only to Texas.

⁹ See the Alameda County Probation Department's data on the number of people on probation in Q4 2018.

¹⁰ Urban Institute. (2012). Supportive Housing for Returning Prisoners: Outcomes and Impacts of the Returning Home-Ohio Pilot Project, p. vii.

¹¹ Kirk, David S. et al. (2017). "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(2), pp. 213-26.

¹² U.K. Office of the Prime Minister. (2002). Reducing Re-Offending by Ex-Prisoners, p. 94.

¹³ Urban Institute. (2004). Taking Stock: Housing, Homelessness, and Prisoner Re-Entry, pp. 7-8.

¹⁴ Tsai, Tim. (2019). Standing Together: A Prevention-Oriented Approach to Ending Homelessness in Oakland, p. 11.

¹⁵ Center for Law and Social Policy and Community Legal Services. (2002). Every Door Closed: Barriers Facing Parents with Criminal Records, p. 1.

¹⁶ David, Laurel and Rebecca J. Shlafer. (2017). "Mental Health of Adolescents with Currently and Formerly Incarcerated Parents." Journal of Adolescence, 54, pp. 120-34. Schlafer, Rebecca J. et al. (2013). Children with Incarcerated Parents – Considering Children's Outcomes in the Context of Complex Family Experiences, p. 3.

There are statistical racial disparities at every stage of the criminal justice system. 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.

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.¹⁹ There are significant disparities among Black women, too, who are five times more likely than White women to be incarcerated.²⁰ Inequalities in incarceration are driven in part by inequalities in policing. In California, Black male residents were three times more likely than White ones to be arrested in 2016.²¹

In Alameda County, 48% of probationers are African American²² even though African Americans make up only 11% of the population.²³

SUMMARY OF OTHER FAIR CHANCE HOUSING POLICIES

Many cities have adopted progressive fair chance housing policies including Richmond, Seattle, and Portland. The City of Richmond, California, passed legislation in 2016 to remove housing barriers for formerly incarcerated residents to access publicly subsidized housing. In 2017, Seattle enacted legislation that removed housing barriers for formerly incarcerated residents to access private or publicly subsidized rental housing. In 2019, Portland enacted a fair chance housing policy similar to Seattle's policy. 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.

There has been national evolution in addressing the problems of housing access for formerly incarcerated people. For example, when it was passed in 2016, the Richmond's fair chance housing ordinance—which applies only to publicly subsidized housing—was the nation's broadest policy. By 2017, the City of Seattle expanded fair chance housing with a policy that applies to both publicly subsidized and private rental housing. In 2019, the City of Portland adopted sweeping tenant laws that included a first in time applicant acceptance and removing criminal records checks from the housing application process.

In November 2019, the Land Use, Housing & Economic Development Committee of the Berkeley City Council approved a similar Fair Chance Housing ordinance, introduced by Mayor Jesse Arreguin in partnership with Just Cities and the Alameda County Fair Chance Housing Coalition. The Berkeley City Council will consider final adoption of the legislation in early 2020.

¹⁷ See the [Stanford Open Policing Project's data](#) on traffic stops and searches across the U.S.

¹⁸ The Sentencing Project. (2018). *Report of the Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance: Regarding Racial Disparities in the United States Criminal Justice System.*

¹⁹ Public Policy Institute of California. (2019). *California's Prison Population*, p. 1.

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

²¹ Public Policy Institute of California. (2019). *Racial Disparities in California Arrests*, p. 1.

²² See the [Alameda County Probation Department's data](#) on the number of people on probation in Q4 2018.

²³ See [U.S. Census Bureau's estimate](#) of the total population that identified as "Black or African American alone" in 2018.

ANALYSIS AND POLICY ALTERNATIVES

ORDINANCE PROHIBITIONS

The proposed ordinance prohibits 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 an applicant's criminal history;
- (c) taking adverse action against a housing applicant or tenant based on their criminal record or history.

"Adverse action" includes refusing to rent or to continue to rent, treating differently from other applicants or tenants, and failing to permit a tenant's close family member from occupying a rental unit with the tenant.

EXEMPTIONS

The following types of properties are exempt from the ordinance:

- (a) owner-occupied properties with 3 or fewer units
- (b) owner-occupied single family homes
- (c) dwellings that were previously occupied by the owner as a primary residence and where the owner has a written rental agreement allowing them to recover possession from the tenant.
- (d) units where the occupying tenant seeks to replace an existing co-tenant, add an additional co-tenant, or sublet.

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 conviction for manufacturing methamphetamines in federally funded housing).

In addition, to protect the safety of persons at-risk, landlords can review and consider whether an applicant is on the state-operated registry of lifetime sex offenders.

IMPLEMENTATION AND ENFORCEMENT

The Ordinance requires the City to develop and publish a notice to inform rental housing applicants of their rights under the ordinance and to make the notice available to housing providers. In addition, the City must mail notice of the Ordinance to all residential rental property owners, according to business tax certification records, within 90 days of final adoption.

A person who believes they have been subject to an adverse action in violation of the Ordinance may file a complaint with the City. The City may impose Civil Penalties of up to \$1,000 for each violation and may recover the costs of enforcement.

An aggrieved person may also file a civil action against a landlord who violates the Ordinance, and seeking treble damages, injunctive relief, attorneys' fees and costs. A civil action for violation of the

Ordinance may also be filed by the City Attorney, or a nonprofit organization with the mission of protecting the rights of tenants or incarcerated persons in Oakland or Alameda County.

In addition, a violation of the Ordinance is an infraction; a knowing and willful violation is a misdemeanor.

FISCAL IMPACT

Costs associated with the adoption of this Ordinance include development and mailing of required notices, public education, and administrative enforcement (investigation and processing of complaints). The City Administrator will address the costs and staffing impacts of administrative enforcement.

However, 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.

PUBLIC OUTREACH / INTEREST

The development of the Fair Chance legislative proposal was led by the Alameda County Fair Chance Housing Coalition who conducted extensive outreach to Oakland residents, including formerly incarcerated people, through community forums and meetings. 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 U.C. Berkeley, and The Way Church.

In addition, the Coalition reached out to the East Bay Rental Housing Association to ensure the landlord community was aware of the Fair Chance Housing policy proposal and to hear their concerns.

COORDINATION

The City Attorney's office, and City Council sponsors coordinated with the City Administrator's office on the introduction of this legislation.

SUSTAINABLE OPPORTUNITIES

Economic: Stable housing is a key stepping stone to economic opportunity among formerly incarcerated people. Conversely, lack of access to stable housing makes it harder for them to secure employment, thus increasing homelessness and recidivism. This resolution thus supports increased economic opportunity for individuals and families and decreased public costs linked to crime and homelessness.

Environmental: By reducing homelessness among formerly incarcerated people, this resolution reduces the burden that people living outdoors has on public spaces and natural environments as well as the burden endured by unsheltered people themselves.

Social Equity: Given decades of biased policing and mass incarceration, which overwhelmingly impact Black people and poor people, the use of criminal background screens for rental housing creates a de facto disparate impact in access to housing. This Ordinance thus supports racial and economic justice by removing structural barriers to housing access among formerly incarcerated people.

ACTION REQUESTED BY THE CITY COUNCIL

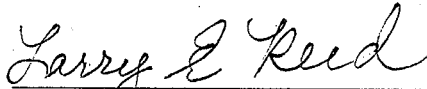
City Attorney Barbara J. Parker, Vice Mayor Larry Reid, Councilmember Nikki Fortunato Bas, and Council President Pro Tempore Dan Kalb recommend that the City Council adopt The Fair Chance Housing Ordinance adding Oakland Municipal Code Chapter 8.25 prohibiting consideration of criminal histories in screening applications for rental housing.

For questions regarding this report, please contact Miya Saika Chen, Chief of Staff, Office of Councilmember Nikki Fortunato Bas, at 510-238-7246 or Laura Lane, Supervising Deputy City Attorney, Office of City Attorney, at 510-238-3838.

Respectfully Submitted,



Barbara J. Parker
City Attorney, Oakland



Larry Reid
Councilmember, District 7



Nikki Fortunato Bas
Councilmember, District 2



Dan Kalb
Councilmember, District 1

INTRODUCED BY PRESIDENT PRO TEMPORE
DAN KALB, VICE MAYOR LARRY REID,
COUNCILMEMBER NIKKI FORTUNATO BAS, AND
CITY ATTORNEY BARBARA J. PARKER

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CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

FAIR CHANCE HOUSING ORDINANCE ADDING OAKLAND MUNICIPAL CODE CHAPTER 8.25 PROHIBITING CONSIDERATION OF CRIMINAL HISTORIES IN SCREENING APPLICATIONS FOR RENTAL HOUSING

WHEREAS, mass incarceration is a national crisis and restoring the rights of people affected by mass incarceration is a national priority;

WHEREAS, the U.S. Department of Justice has estimated one in every three adults in the United States has either an arrest or conviction record; and

WHEREAS, the Center for American Progress reports that nearly half of all children in the United States have at least one parent with a criminal record; and

WHEREAS, 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. Many housing providers in conducting criminal background checks are relying on such inaccurate information in evaluating housing applications; and

WHEREAS, formerly incarcerated persons face barriers to access to both private rental and publicly subsidized affordable housing; and

WHEREAS, homelessness is a critical issue in Oakland 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 community after incarceration; and

WHEREAS, the unmet housing needs of formerly incarcerated people in Oakland are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community; and

WHEREAS, research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration; and

WHEREAS, reliance on criminal history to select tenants impedes formerly incarcerated persons from gaining access to housing in the City of Oakland, to the detriment of health, welfare, and public safety of the City's residents; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Addition of Chapter 8.25, Article I to the Oakland Municipal Code. The City Council hereby adopts the addition of Chapter 8.25, Article I to the Oakland Municipal Code, as follows:

Article I – Ronald V. Dellums Fair Chance Access to Housing Ordinance

8.25.010 – Title, Purpose, and Application

- A. This Article I shall be known as the "Ronald V. Dellums Fair Chance Access to Housing Ordinance" and may be shortened to the "Fair Chance Housing Ordinance." (The term "this Article" and "this Ordinance" may be used interchangeably to refer to the Ron V. Dellums Fair Chance Access to Housing Ordinance as set forth in this Article.)
- B. The purpose of this Article is to limit the use of criminal history in tenant selection policies in order to give previously incarcerated persons or other persons with a criminal history a fair opportunity to compete for rental housing and to be able to reside with family members and others, thus putting them in a better position to reintegrate into the community and to obtain gainful employment. Such housing opportunities should also reduce the incidence of homelessness for persons with a criminal history. Further, the recitals set forth in the adopted form of this Ordinance, are incorporated into this Article as if fully set forth herein.

8.25.020 – Definitions

- A. "Adverse Action" means (1) to fail or refuse to rent or lease Housing to an individual; (2) to fail or refuse to continue to rent or lease Housing to an individual; (3) to reduce the amount or term of any tenant subsidy for Housing; (4) to treat an individual differently from other applicants or tenants such as requiring higher security deposit or rent; (5) to treat an individual as ineligible for a tenant-based rental assistance program, including, but not limited to, the Section 8 Housing Choice Voucher Program, or (6) to fail to permit the addition of a tenant's Close Family Member to occupy a rental unit while the occupying tenant remains in occupancy, based on Criminal History.

- B. "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 at their rental unit based on the application of an Applicant to reside in such family member's rental unit; and a tenant who believes they were subject to an Adverse Action based on the application of a person to reside in such tenant's rental unit to replace an existing tenant, add a new tenant, or to sublet.
- C. "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, 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.
- D. "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.
- E. "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 by any consumer reporting or tenant screening agency.
- F. "Close Family Member" means a spouse, domestic partner, child, sibling, parent, grandparent, or grandchild.
- G. "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.
- H. "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 individual 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.

- I. "Housing" means any residential rental housing, building, or unit, whether legally permitted or not, in the City of Oakland, with the exception of the following:
 1. Single-family dwellings where the owner occupies the dwelling as his or her principal residence;
 2. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by the owner as his or her principal residence;
 3. Units where the owner has previously occupied the rental unit as his or her principal residence and has the right to recover possession for his or her occupancy as a principal residence under a written rental agreement with the current tenants; and
 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.

- J. "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, or 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 Oakland Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including, but not limited to, the Section 8 Housing Choice Voucher Program, shall also be considered a "Housing Provider".

8.25.030 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 Criminal History, require an Applicant to authorize the release of 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 Ordinance 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. Sec. 13663(a)) and 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. Sec. 982.553)), provided that 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 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 to providing 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 checking for certain types of criminal history and requested written consent, or if the Applicant objects provided the opportunity to withdraw the rental application.

The denial of Housing may only be based on State and Federal requirements.

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; and
2. Provided to the Applicant a conditional rental agreement that commits to providing the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History criteria with respect to the registry of lifetime sex offenders.
3. Informed the Applicant in advance that the Housing Provider will be checking the sex offender registry and requested written consent or if the Applicant objects provided the opportunity to withdraw the rental application.

D. 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 regarding how to file a complaint about the Adverse Action with the City, a list of local legal services providers including contact

information; and a copy of any Criminal History, 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 not require reimbursement or payment from the Applicant for providing any Criminal History or Criminal Background Check Report.

8.25.040 Requirements for Housing Providers

- A. It shall be unlawful for any Housing Provider, 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 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 Housing of their rights under this Ordinance. The notice shall contain the following information:
 - 1. A description of the restrictions and requirements of this Ordinance;
 - 2. Instructions for submitting a complaint to the City regarding a violation of this Ordinance; and
 - 3. Information about community resources available to assist an Applicant in connection with a violation of the Ordinance.
- C. Housing Providers shall include the notice described in Section 8.25.040.B prominently on their application materials, websites and at any locations under their control that are frequently visited by Applicants.
- D. 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.
- E. Nothing in this section shall prohibit a Housing Provider from complying with a request by the City to provide records for purposes of demonstrating compliance with the requirements of this Ordinance.

8.25.050 Retaliation Prohibited

It shall be a violation of this Article to interfere with, 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 Article.

8.25.060 Remedies

- A. Administrative Remedies. For any violation of this Ordinance the City may take the following administrative actions:
1. Issue a civil penalty of up to \$1,000 for each violation.
 2. Recover the costs of any investigation or issuance of civil penalties.
 3. Issue a warning letter and assess costs in lieu of issuing a civil penalty for a violation.
- B. Any Aggrieved Person who believes an Adverse Action was based on a violation of this Ordinance shall have the right to submit a complaint to the City. The City shall review the complaint and any evidence submitted by the Aggrieved Person. The City may, at its sole discretion, conduct an investigation that may include interviewing witnesses, reviewing documents and records, and any other lawful and reasonable investigative actions.
- C. If, upon review of the evidence submitted by the Aggrieved Person and any other evidence discovered during the course of review or investigation, the City finds that a violation occurred, the City may take administrative action pursuant to paragraph A.
- D. All records submitted to or obtained by the City containing any criminal history or background check report of any Aggrieved Person shall be kept confidential to the extent permissible by law.
- E. Penalties and costs assessed under this Ordinance may be recovered by all appropriate legal means including but not limited to civil and small claims action brought by the City.
- F. Civil Remedies. A civil action to enforce the provisions of this Ordinance may be brought by:
1. Any Aggrieved Person;
 2. The City Attorney; or
 3. Any organization that:
 - a. Has tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4); and
 - b. Has a mission of protecting the rights of tenants or incarcerated persons in Oakland or Alameda County; and

- c. Will fairly and adequately represent the interests of the Aggrieved Person.
- G. Equitable Relief. Any Housing Provider who commits, proposes to commit, or aids another in committing an act that violates this Ordinance may be enjoined therefrom by any court of competent jurisdiction. The court may also award any further relief it deems proper.
- H. Civil Damages. Any Housing Provider who violates, and any person who aids a Housing Provider to violate, any provision of this Ordinance shall be liable for the following monetary damages:
 - 1. In any action brought by any Aggrieved Person or entity authorized to bring such action under subsection F.3., above, the Housing Provider shall be liable for three times the greater of either: a) actual damages, including damages for mental or emotional distress, b) one month's rent that the Housing Provider charges for the rental unit in question, or c) the HUD Small Area Fair Market Rent of such Rental Unit.
 - 2. The court may award punitive damages in a proper case as set out in Civil Code Section 3294 and pursuant to the standards set forth in that Code Section or any successor thereto, but may not award both punitive damages and treble damages.
 - 3. Attorney's Fees and Costs. The Aggrieved Person or entity authorized to bring such action under subsection F.3., above, may recover costs and reasonable attorney's fees. The Housing Provider may recover attorney's fees if the action brought is found by the Court to be frivolous and without merit.
 - 4. The City Attorney may file an action against a Housing Provider that the City Attorney believes has violated provisions of this Ordinance. Such an action may include requests for civil penalties of up to \$1,000 per violation, equitable relief (e.g., injunctions and restitution), and recovery of costs and reasonable attorney's fees. The City Attorney has sole discretion to determine whether to bring such an action.
- I. Criminal Penalties
 - 1. Infraction. Any Housing Provider who violates, or any person who aids a Housing Provider to violate, any provision of this Ordinance shall be guilty of an infraction for the first offense.
 - 2. Misdemeanor. Any Housing Provider who knowingly and willfully violates, or any person who knowingly and willfully aids a Housing Provider to violate, any provision of this ordinance shall be guilty of a misdemeanor.

J. General Remedies. The remedies available in this Ordinance are not exclusive and may be used cumulatively with any other remedies in this Ordinance or at law.

SECTION 2. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

SECTION 3. Notice to Housing Providers. The City Administer is directed to cause notice of this Ordinance to be mailed to all residential rental property owners, according to the business tax certification records of the Revenue Management Bureau, within 90 days of final adoption of this Ordinance.

SECTION 4. Enforcement. A Housing Provider shall not be liable under Section 8.22.060 for a violation within 180 days after final adoption of this Ordinance, unless the Housing Provider has first received a warning letter from the City regarding a violation of the Ordinance.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 6. CEQA Exemption. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

FAIR CHANCE HOUSING ORDINANCE ADDING OAKLAND MUNICIPAL CODE CHAPTER 8.25 PROHIBITING CONSIDERATION OF CRIMINAL HISTORIES IN SCREENING APPLICATIONS FOR RENTAL HOUSING

This Ordinance adds a new Oakland Municipal Code Chapter 8.25 that prohibits the consideration of criminal histories in screening applications for rental housing.