AGENDA REPORT

Vice Mayor Larry Reid
Councilmember Nikki Fortunato Bas
President Pro Tempore Dan Kalb

CITY OF OAKLAND

CITY HALL, 1 FRANK OGAWA PLAZA, 2ND FLOOR, OAKLAND, CALIFORNIA 94612

DATE: January 9, 2020

TO: City Council and Members of the Public

FROM: Vice Mayor Larry Reid, Councilmember Nikki Fortunato, President Pro Tempore Dan Kalb

SUBJECT: Supplemental Report on Fair Chance Housing Ordinance

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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

RATIONALE FOR SUPPLEMENTAL

As co-sponsors of the Fair Chance Housing Ordinance, we want to provide context for the origin of the Ordinance and acknowledge the coalition that brought this legislation forward for our consideration. We also recommend that the following modifications be made as part of the adoption of the Fair Chance Housing Ordinance.

Item _____
Community & Economic Development Committee
January 14, 2020

1. Fair Chance Housing Ordinance Name

The leaders of the fair chance housing policy campaign, the Alameda County Fair Chance Housing Coalition led by Just Cities, proposed to name the Fair Chance Housing Ordinance after former Berkeley City Councilmember, Congressman, Oakland Mayor, and world humanitarian Ronald V. Dellums in honor of his legacy and to inspire policymakers across the nation to champion human rights. In addition, in honor of Fair Chance Housing Policy and Outreach Leader, Ms. Towanda Sherry, longtime community leader and advocate on behalf of the human rights of formerly incarcerated people, the Coalition also proposed to name the policy after Ms. Sherry's son, Simbarashe Sherry, who transitioned on September 17, 2019. Because of his criminal record, upon his return home from prison, Simbarashe was prevented from living with his mother and accessing the family support that he needed to thrive and realize his human potential. More information about the legacy of Ronald V. Dellums and Simbarashe Sherry is included in the Just Cities' Policy Justice Memo, **Attachment A**.

We support naming the Fair Chance Housing Ordinance after both Ronald V. Dellums and Simbarashe Sherry, as described in the revised ordinance.

2. Transformative Policymaking Process

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

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

Young Democrats, Essie Justice Group, Friends of Adeline, Just Cities, Justice Reinvestment Coalition, Laney College Restoring Our Communities Center, League of Women Voters for Oakland, Make Oakland Better Now, McGee Baptist Church, National Housing Law Project, Our Beloved Community Action Network, PolicyLink, Root & Rebound, Safe Return Project, Sierra Club, Tech Equity Collaborative, Underground Scholars of UC Berkeley, and The Way Church.

3. Annual Report to City Council and Annual Nonprofit Certification

The proposed Ordinance would be strengthened by including an annual certification of compliance by Affordable Housing Providers and an annual report from the City Administration to the City Council regarding status of the Ordinance including complaints the City received, resolution of those complaints, any City enforcement action, and status of Affordable Housing Providers certification of compliance. These best practice policy implementation strategies are also included in the Fair Chance Housing ordinances for the Cities of Seattle, Richmond, and Berkeley. The Richmond requirements, however, are more robust and require the submission of Applicants' demographic information and other information.

It is especially critical in the early years of new legislation for the City Council and the public to know about the implementation status of the legislation and whether any aspects need to be refined. Therefore, we recommend the addition of the following sections to the Ordinance:

Proposed New Sections

8.25.020 Definitions

B. "Affordable Housing" shall mean any Housing that (i) has received or is receiving City, County, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing rental housing for extremely low income, very low income, low income, and moderate income households (collectively, "Public Funding"), with the exception of Housing where the only Public Funding received is in the form of a Local, State or Federal tenant-based voucher, such as through the Section 8 tenant-based voucher program (42 U.S.C. Section 1437f); or (ii) is subject to affordability and related requirements pursuant to the City's Below Market-Rate Rental Housing Program, including, but not limited to, the State Density Bonus law (California Government Code Sections 65915-65918 and OMC Chapter 17.107.040).

C. "Affordable Housing Provider" shall mean any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the City. Any

agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Housing Providers shall also be considered an "Affordable Housing Provider".

8.25.40 Requirements for Housing Providers

F. In addition to the requirements in Paragraphs A-E of this section, Affordable Housing Providers shall also submit to the City an annual certificate of compliance with the requirements of this Ordinance in the form provided by the City.

SECTION 4. Enforcement

Add to the current Ordinance language: *In addition, the City Administrator or designee shall provide annual public reports to the City Council on the implementation and enforcement of this Ordinance. The annual reports shall include, at a minimum: information from the annual compliance certifications submitted by Affordable Housing Providers; the number of complaints filed with the City regarding violations of this Ordinance and the outcomes of such complaints, the number of notices filed with the City regarding private court action brought under the Ordinance and the outcomes of such court proceedings.*

4. City Funding for Community Outreach and Education

As City experience has informed us, effective implementation of new legislation requires informing both the regulated groups and members of the protected groups of the new laws. In sharing their lessons learned about their Fair Chance Housing policy, the City of Seattle's Civil Rights Office strongly recommended City investment in community outreach and education efforts. The City of Berkeley has proposed including City funds for Fair Chance Housing community outreach and enforcement as part of their upcoming budget process. The Alameda County Fair Chance Housing Coalition have been in conversation with private funders and Alameda County about their potential investment in countywide community outreach and education to ensure effective implementation of the Fair Chance Housing policies being passed in Alameda County.

We recommend that the City of Oakland participates in a countywide coordinated community outreach and education program and allocates $75,000 as part of the new mid-cycle budget towards these critical efforts.

ACTION REQUESTED BY THE CITY COUNCIL

Vice Mayor Reid, Councilmember Nikki Fortunato Bas and President Pro Tempore Dan Kalb recommend the City Council adopt The Fair Chance Housing Ordinance adding Oakland

Vice Mayor Reid, Councilmember Nikki Fortunato Bas, President Pro Tempore Dan Kalb
Subject: Supplemental Report Fair Chance Housing Ordinance

Municipal Code Chapter 8.25 prohibiting consideration of criminal histories in screening applications for rental housing with the above amendments.

For questions regarding this report, please contact Miya Saika Chen, Chief of Staff, Office of Councilmember Nikki Fortunato Bas, at 510-238-7246.

Respectfully Submitted,

Larry Reid
Vice Mayor
Councilmember, District 7

Nikki Fortunato Bas
Councilmember, District 2

Dan Kalb
President Pro Tempore
Councilmember, District 1

ATTACHMENT A: Just Cities Fair Chance Housing Policy Memo

Item _____
Community & Economic Development Committee
January 14, 2020

JUST CITIES
Restorative Justice in Planning & Policy

A Policy Justice Brief for Oakland Political Leaders

DATE: December 19, 2019

TO: City of Oakland: City Attorney Barbara Parker and Councilmembers Larry Reid, Nikki Fortunato Bas, Dan Kalb

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

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

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SUMMARY

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

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

The Fair Chance Housing Ordinance would result in:

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

2) Landlords assessing the merits of individual housing applications rather than the current status of blanket exclusion of applications solely on the basis of criminal records.

3) Formerly incarcerated people and their family members having access to safe, stable, and affordable housing that they need in order to reclaim their lives and effectively re-integrate into the community.

4) Decrease in recidivism rates by removing structural barriers to stable housing, including with family members, for formerly incarcerated people.

BACKGROUND

SUMMARY OF FLAWS WITH CRIMINAL BACKGROUND DATABASE SYSTEMS

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

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

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

[1] U.S. Department of Justice. (2006). *The Attorney General's Report on Criminal History Background Checks*, p. 3.
[2] National Consortium of Justice Statistics. (2018). *Survey of State Criminal History Information Systems, 2016: A Criminal Justice Information Policy Report*, p. 2.
[3] National Employment Law Project. (2013). *Wanted: Accurate FBI Background Checks for Employment*, pp. 1-2.

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

SUMMARY OF HOUSING ACCESS BARRIERS FOR PEOPLE WITH CRIMINAL RECORDS

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

SUMMARY OF PUBLIC HEALTH & SAFETY IMPACTS FROM HOUSING BARRIERS:

As the state with the second highest population of people currently in prison or jail in the country,[8] California will need to house formerly incarcerated people as they reenter society in a highly impacted housing market. Alameda County has a total of 7,900 people on probation or parole, with over 3,900 of them living in Oakland alone.[9] Incarceration and lack of housing can lead to severely limited economic opportunity, thereby increasing the chances of recidivism and public safety impacts.

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

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

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

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

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

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

Research has shown that access to stable and affordable housing enables people to successfully re-integrate into society. For example, two studies in Ohio[10] and Maryland[11] found that providing housing subsidies or public housing to recently released incarcerated persons reduced the chances that they would be rearrested in the first year. A government study conducted in the United Kingdom found that stable housing was associated with a 20% reduction in the chance of being reconvicted.[12]

Extensive research also shows the direct link between incarceration history, homelessness, and health.[13] For example, a recent participatory action research project between Just Cities, The Village, and the UC Berkeley Goldman School for Public Policy's Center for Civility & Democratic Engagement found that 73% of unhoused residents interviewed in Oakland's encampments were formerly incarcerated![14]

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

SUMMARY OF RACIAL DISPARITY:

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

There are statistical racial disparities at every stage of the criminal justice system. Research has demonstrated that African Americans are more likely to be stopped by police,[17] prosecuted

[10] Fontaine, Jocelyn, Douglas Gilchrist-Scott, John Roman, Samuel Taxy, and Caterina Roman. "Supportive Housing for Returning Prisoners: Outcomes and Impacts of the Returning Home-Ohio Pilot Project." PsycEXTRA Dataset, August 2012. https://doi.org/10.1037/e527702013-001.
[11] Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." Journal of Experimental Criminology 14, no. 2 (2017): 213–26. https://doi.org/10.1007/s11292-017-9317-z.
[12] Kirk, David S., Geoffrey C. Barnes, Jordan M. Hyatt, and Brook W. Kearley. "The Impact of Residential Change and Housing Stability on Recidivism: Pilot Results from the Maryland Opportunities through Vouchers Experiment (MOVE)." Journal of Experimental Criminology 14, no. 2 (2017): 213–26. https://doi.org/10.1007/s11292-017-9317-z.
[13] Roman, Caterina Gouvis, and Jeremy Travis. "Taking Stock: Housing, Homelessness, and Prisoner Reentry." PsycEXTRA Dataset, 2004. http://webarchive.urban.org/UploadedPDF/411096_taking_stock.pdf p.7-8
[14] Tsai, Tim. "Standing Together: A Prevention-Oriented Approach to Ending Homelessness in Oakland." http://bit.ly/HomelessPrevention2019 p.12
[15] Hirsch, Amy E, Sharon M Dietrich, Rue Landau, Peter D Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. Every Door Closed: Barriers Facing Parents with Criminal Records. Philadelphia, PA: Community Legal Services, Inc, 2002. p.1 https://www.clasp.org/sites/default/files/publications/2018/01/every_door_closed.pdf
[16] Davis, Laurel, and Rebecca J. Shlafer. "Mental Health of Adolescents with Currently and Formerly Incarcerated Parents." Journal of Adolescence 54 (2017): 120–34. https://doi.org/10.1016/j.adolescence.2016.10.006. Shlafer, Rebecca J, Erica Gerrity, Ebony Ruhland, and Marc Wheeler. "Children with Incarcerated Parents – Considering Children's Outcomes in the Context of Complex Family Experiences." Children, Youth, and Family Consortium, 2013. https://www.prisonpolicy.org/scans/umn/June2013ereview.pdf. p.3
[17] "Findings" Stanford Open Policing Project. Accessed October 4, 2019. https://openpolicing.stanford.edu/findings/.

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

These disparities are even more acute in California. According to the Public Policy Institute of California, in 2017, African Americans made up 5.6% of the state's adult men but 28.5% of its male prisoners.[21] As a result, Black men were ten times more likely than White men to be incarcerated. Latino men were more than twice as likely as White men to be incarcerated. There were significant disparities among Black women, too, who were five times more likely than White women to be incarcerated.[22] Inequalities in incarceration were driven in part by inequalities in policing. Again, according to the Public Policy Institute of California, Black male residents were three times more likely than White ones to be arrested in 2016.[23]

Here in Alameda County, 48% of probationers are African American[24] even though African Americans make up only 11% of the population.[25]

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

SUMMARY OF HUD GUIDANCE:

On or about April 4, 2016, the United States Department of Housing and Urban Development issued the "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions" in which it states

[18] Porter, Nicole D., Nazgol Ghandnoosh, Josh Rovner, and Jean Chung. "Racial Disparity." The Sentencing Project, September 30, 2019. https://www.sentencingproject.org/issues/racial-disparity/.
[19] Berdejó, Carlos. (2018). Criminalizing Race: Racial Disparities in Plea-Bargaining. *Boston College Law Review*, 59(4), pp. 1189-91.
[20] Berdejó, Carlos. (2018). Criminalizing Race: Racial Disparities in Plea-Bargaining. *Boston College Law Review*, 59(4), pp. 1189-91.
[21] Public Policy Institute of California. (2019). *California's Prison Population*, p. 1.
[22] Public Policy Institute of California. (2019). *California's Prison Population*, p. 1.
[23] Public Policy Institute of California. (2019). *Racial Disparities in California Arrests*, p. 1.
[24] Total population in probation, Q4 2018 "Alameda County Probation Department Data Dashboard". Alameda County. Accessed October 4, 2019. https://www.acgov.org/probation/dashboard.htm.
[25] "U.S. Census Bureau QuickFacts: Alameda County, California." United States Census Bureau. Accessed October 4, 2019. https://www.census.gov/quickfacts/alamedacountycalifornia.

that "Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction."

SUMMARY OF OTHER FAIR CHANCE HOUSING POLICIES:

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

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

In November 2019, under the leadership of Mayor Jesse Arreguin and in partnership with Just Cities and the Alameda County Fair Chance Housing Coalition, the City of Berkeley Land Use Committee passed a similar Fair Chance Housing ordinance.

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

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

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

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

Building on their successful anti-displacement funding efforts with Alameda County and the cities of Berkeley and Oakland in 2017, the Our Beloved Community Action Network[26] (BCAN) leaders led by Just Cities/the Dellums Institute resolved to work together to address the removal of housing barriers for formerly incarcerated people. Through the advocacy of BCAN partner, the TechEquity Collaborative, the Chan Zuckerberg Initiative has provided resources for the development of the Alameda County Fair Chance Housing Coalition, including a leadership development program for formerly incarcerated people or their family members—the Policy and Outreach Leaders (POLs). The following community leaders have served as the POLs: Ms. Towanda Sherry, Ms. Anita Wills, Katie Dixon, and Taqwaa Bonner.

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

SUMMARY OF FAIR CHANCE HOUSING POLICY TERMS

The following is a summary of the proposed Fair Chance Housing policy. These policies were crafted after multiple design meetings with Oakland formerly incarcerated people and family members; meetings with City officials; community forums with Oakland residents and community organizations; and surveys of Oakland residents, including formerly incarcerated people and unhoused people.

NAMED AFTER CONGRESSMAN RON DELLUMS AND SIMBARASHE SHERRY:

The Coalition is proposing to name the Fair Chance Housing policy after former Berkeley City Councilmember, Congressman, Oakland Mayor, and world humanitarian Ronald V. Dellums in honor of his legacy and to inspire policymakers across the nation to champion human rights. Congressman Dellums passed away in July 2018. For over fifty years, Ron Dellums practiced courageous and principled leadership to advance the human rights and needs of all peoples, especially those who have been discriminated against and marginalized. He was born in 1935 and grew up in a segregated West Oakland. He had a troubled youth and almost did not graduate from high school. After serving in the Marines, Ron Dellums became a UC Berkeley trained psychiatric social worker and a community

[26] For more information about the **Our Beloved Community Action Network**: http://dellumsinstitute.org/bcan

organizer. At the age of 31, Ron Dellums was on his way to a PhD program at Brandeis when he was recruited by activists to serve on the Berkeley City Council.

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

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

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

Already in his 70s, Ron Dellums was drafted to serve as Mayor of Oakland from 2007 to 2010, where he opened up City Hall for Oakland's people to develop Oakland as a model city for the world. To institutionalize civic engagement, Ron Dellums created 41 Citizen Task Forces that involved over 800 residents and resulted in policy changes such as the adoption of an industrial lands policy to facilitate economic development and jobs for Oakland residents and strategies to improve air quality from Port operations. He created a Re-Entry Services program out of the Mayor's office that welcomed formerly incarcerated residents home and helped them find jobs, housing, and support. His Administration implemented the Ban the Box in employment policy to remove structural barriers for formerly incarcerated residents to access City employment opportunities.

Mayor Dellums developed a comprehensive public safety plan which resulted in a 38% decline in homicides and a 25% decline in all Part I (major) crimes. He reformed the Oakland Police Department and advanced community and constitutional policing. He led unprecedented City efforts involving business, labor, education, and community leaders to develop a comprehensive vision for a sustainable and equitable local economy, which resulted in $550 million of new funding for projects and the generation of over 14,000 jobs during the Great Recession.

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

In honor of Fair Chance Housing Policy and Outreach Leader, Ms. Towanda Sherry, longtime community leader and advocate on behalf of the human rights of formerly incarcerated people, the Coalition is also proposing to name the policy after Ms. Sherry's son, Simbarashe Sherry, who transitioned on September 17, 2019. Because of his criminal record, upon his return home from prison, Simbarashe was prevented from living with his mother and accessing the family support that he needed to thrive and realize his human potential.

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

POLICY GOALS:

1. Remove current structural barriers faced by formerly incarcerated people when they apply for private or publicly subsidized housing to enable them to be considered on the merits of their present situation, rather than the albatross of their past.

2. Create a due process system that a) enables formerly incarcerated people the ability to complain to the City and also sue to enforce their rights under the Ordinance; and b) builds on the City's current administrative systems and capacity.

3. Design policy terms based upon an understanding of the different application and review processes by private and multiple kinds of Affordable Housing providers.

4. Create reporting requirements that are streamlined and also helps Affordable Housing providers transform their current application and review systems.

5. Avoid unintended consequences by not having burdensome or complex requirements for landlords.

6. Address the realities and special considerations of landlords who reside on their rental property that are smaller buildings, e.g. triplexes and smaller.

MAIN PROPOSED POLICY TERMS:

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

Housing Provider	Criminal Background Check	Due Process	Reporting to City	Potential Remedies for Violations
Private (Non-Affordable Housing Provider)	No	City Complaint or Sue in Court	None	City complaint w/ fine. Court action w/ damages or injunctive relief.
Publicly Subsidized & Not HUD Funded	No	City Complaint or Sue in Court	Annual certification of compliance	City complaint w/ fine. Court action w/ damages or injunctive relief.
HUD Funded	Per federal requirements, limited checks are required. Subject to local due process protections.	City Complaint or Sue in Court	Annual certification of compliance	City complaint w/ fine. Court action w/ damages or injunctive relief.

CRIMINAL BACKGROUND CHECKS:

The proposed ordinance prohibits ALL landlords from:

(a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,

(b) Asking about or requiring disclosure of someone's criminal history, or

(c) Taking adverse action against an applicant or tenant based on his or her criminal history.

Exemptions to the ordinance:

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

IMPLEMENTATION & ENFORCEMENT:

1. Private Rental Housing Application & Complaint Process

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

- Due Process, Remedies & Enforcement—See below

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

- Definition: any housing provider receiving direct local, county, state, or federal subsidy. We have removed Section 8 landlords from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders.

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

- Annual Reports: only publicly subsidized housing providers would submit an annual certification of compliance to the City utilizing a City template. The Coalition would like to work with the City on designing the compliance template.

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

- Complaint Process:
  - The applicant would have the right to file a complaint with the City Administrator's designated agency within one year from the date of application for housing. The City can investigate the complaint and, upon a determination of a violation, issue an Administrative citation.
  - The public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence.

- A private right of action and attorney's fees for the prevailing applicant are provided.

- Oakland's current administrative penalty system is also integrated into the proposal.

- Landlord retaliation is explicitly prohibited.

- Landlords are required to maintain documentation of any conviction history that they obtain on applicants for at least three years.

- Effective date of the ordinance is immediate with a 6 month period after its adoption for City implementation and enforcement.

- The City Administrator or their designee would provide an annual status report to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information.

COMMUNITY OUTREACH & EDUCATION:

Given our prior experiences with new policies and legislation, it is critical for the City to invest in community outreach and education in order for both beneficiaries of the new law and the people being regulated to know and understand the changes and redress available. In fact, in sharing their lessons learned about their Fair Chance Housing policy, the City of Seattle's Civil Rights Office strongly recommended investment in community outreach and education efforts. The City of Berkeley has proposed including City funds for Fair Chance Housing community outreach and enforcement as part of their upcoming budget process. We have been in conversation with private funders and Alameda County about their potential investment in countywide community outreach and education to ensure effective implementation of the Fair Chance Housing policies. We are recommending that the City of Oakland participates in a countywide coordinated community outreach and education program and allocates $75,000 towards these critical efforts.

CONCLUSION

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

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