

CITY OF BERKELEY ADMINISTRATIVE REGULATIONS
SUBJECT: Fair Chance Ordinance Administrative Complaints

PURPOSE

The purpose of this Administrative Regulation is to set forth a procedure for the adjudication of Administrative Complaints pursuant to the Ronald V. Dellums Fair Chance Access to Housing Ordinance ("Fair Chance Ordinance," B.M.C. Chapter 13.106).

POLICY

It is the policy of the City of Berkeley to ensure that Administrative Complaints raised under the Fair Chance Ordinance be adjudicated through a fair and orderly hearing process.

DEFINITIONS

For purposes of this Administrative Regulation, "the City" refers to the entity delegated responsibility for adjudication of Administrative Complaints, which as of FY22 is the Berkeley Rent Stabilization Board. However, in the event of a final decision, that final decision shall be considered the final decision of the City for purposes of Code of Civil Procedure Section 1094.6.

The term "Adverse Action," shall have the meaning set forth in Subsection 13.106.030.A.:

"Adverse Action" means to take one of the following actions based on a person's Criminal or Conviction History:

- 1. Failing or refusing to rent or lease Housing to a person;*
- 2. Failing or refusing to continue to rent or lease Housing to a person;*
- 3. Reducing the amount or term of any person's subsidy for Housing;*
- 4. Treating an Applicant or tenant differently from other applicants or tenants, including but not limited to, taking such actions as requiring higher security deposit or rent;*
- 5. Treating a person as ineligible for a tenant-based rental assistance program, including but not limited to, the Section 8 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.*

The term "Applicant" shall have the meaning set forth in Subsection 13.106.030.E.:
"Applicant" means a person who seeks information about, visits, or applies to rent or lease Housing; who applies for a tenant-based rental assistance program, including but not limited to the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 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.

The term "Close Family Member" shall have the meaning set forth in Subsection 13.106.030.H.:

"Close Family Member" means a spouse, registered domestic partner, child, sibling, parent, grandparent, or grandchild.

The term "Housing Provider," shall have the meaning set forth in Subsection 13.106.030.L.:

"Housing Provider" shall mean any Person that owns, master leases, manages, or develops Housing in the City. For the purpose of this definition, "Person" includes one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and any political or civil subdivision or agency or instrumentality of the City. In addition, any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Persons, and any government agency, including but not limited to the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including but not limited to the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f), shall also be considered a "Housing Provider."

Any amendment to Section 13.106.030 shall supersede the definitions listed above for purposes of this Administrative Regulation.

PROCEDURES

1. COMPLAINTS: (13.106.090.A.)

- a. Any Applicant subject to an Adverse Action or their Close Family Member who believes the Adverse Action was based on a violation of the Fair Chance Ordinance shall have the right to submit a complaint to the City under the rules set forth by this regulation.
- b. Complaints must be submitted by completing a form provided by the City and include any supporting documentation. Complaints and supporting documentation shall be served on the Housing Provider and must include a proof of service as required under subsection f. below.

- c. The Applicant must submit a complaint within one year of the date the Applicant submitted an application to the Housing Provider or the date of the violation, whichever is earlier.
- d. Preliminary review of complaints.
 - i. Complaints that are complete and timely submitted in conformance with this regulation will be accepted and subject to the hearing process if they contain a claim that is cognizable under the Chapter, meaning that the complaint has set forth factual allegations which would indicate that a violation of the Chapter has occurred. For example, a complaint that is speculative, conclusory, or lacks sufficient factual allegations to infer discriminatory conduct in violation of the Chapter will be dismissed without a hearing.
 - ii. If a complaint is determined by a preliminary review to not state a claim that is cognizable under the Chapter, the Applicant may amend the complaint within 14 calendar days from the date the City mails a notice allowing the Applicant to amend the complaint. If the Applicant fails to timely and sufficiently amend the complaint, the complaint will be dismissed.
- e. The City shall notify the Housing Provider of an accepted complaint that is subject to the hearing process and send the Housing Provider an answer form to be used to respond to the Complaint. An answer and any supporting documentation must be submitted within 30 days of the mailing of the answer form to the Housing Provider. An answer and supporting documentation shall also include a proof of service as required under subsection f below.
- f. A proof of service using a form provided by the City is required with all submissions to the City concerning a complaint. The proof of service indicates that a document has been served on the opposing party either by first-class mail or in person.

2. HEARINGS: (13.106.090.B except where otherwise noted.)

- a. An administrative hearing before a hearing officer designated by the City Manager will be scheduled within 90 days of the date of submission of the complaint. This deadline may be extended with the consent of all parties. (13.106.090.A.)
- b. The parties shall have the following rights at an administrative hearing conducted pursuant to this Section:
 - i. Attendance.
 - 1. To have the parties and their witnesses present at the hearing.
 - 2. To have an advocate of their choosing to represent them at the hearing.

3. To have a translator present at the hearing when translation is reasonably necessary and reasonably available.
 4. To have any other person approved by the hearing officer as a reasonable accommodation for a person with a disability.
- ii. Evidence.
 1. To present any relevant witnesses, documents, and any other evidence which will be considered without regard to admissibility under court rules of evidence.
 2. The hearing officer may exclude overly repetitious or irrelevant evidence.
 3. To examine the other party's evidence and to rebut and cross-examine any witnesses.
 - iii. Reasonable Accommodations.
 1. To request any reasonable accommodation needed to participate in the hearing process.
 2. The hearing officer will consider reasonable accommodation requests from all persons with disabilities. A party may ask the City to review any denial of such requests by the Hearing Officer.
 - iv. Recording.
 1. To record the hearing.
 2. Hearings will be recorded in either audio or video format and retained by the agency conducting the hearing for a period of at least three years from the date of the hearing.
3. DECISIONS: (13.106.090. C.)
- a. The hearing officer shall issue a written decision stating whether any violation of the Chapter has occurred and the reasons for the decision. The reasoning shall include factual findings and conclusions.
 - b. A copy of the hearing decision must be furnished promptly to the parties and their representatives.
 - c. The remedies issued by the hearing officer shall be limited to Section 13.106.100.A. By this Administrative Regulation, the City Manager authorizes the hearing officer to act as an "enforcement officer" within the meaning of Section 12.28.20. Where the hearing officer determines that a violation of the Chapter

has occurred and is ongoing, the hearing officer shall issue an administrative citation under Chapter 1.28.

4. APPEALS:

- a. A Housing Provider may contest the amount of the administrative citation imposed by the hearing officer's decision pursuant to the appeal process set forth in B.M.C. Chapter 1.28. In an appeal of the amount of the administrative citation, the hearing officer's factual findings and conclusions set forth in the hearing decision shall be considered binding for purposes of Chapter 1.28 and only the amount of the citation shall be subject to appeal.
- b. A Housing Provider who does not contest the amount of the administrative citation may treat the hearing officer's decision as the final decision of the City once the 21-day period for appeal has lapsed and file a petition for writ of mandate under Code of Civil Procedure 1094.6 to challenge the determinations in the hearing officer's decision.
- c. An Applicant may contest the hearing officer's decision by filing a petition for writ of mandate under Code of Civil Procedure 1094.6 within 90 days of the final decision, contingent upon the Housing Provider's right to appeal the amount of the administrative citation set forth in subsection a., above.

POLICY HISTORY AND CITATIONS

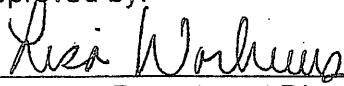

This is a new policy issued in July 26, 2021.

APPROVAL

This policy was issued on July 6, 2021, and approved by:



Dee Williams-Ridley, City Manager

<p>RESPONSIBLE DEPARTMENT: Health, Housing & Community Services</p>	<p>Approved by:  Department Director</p>
<p>TO BE REVIEWED/REVISED: Every 2 years</p>	<p> City Manager</p>