



## **Berkeley Fair Chance Housing FAQ for Formerly Incarcerated and Families**

### **1. If I have a criminal record, what are my rights under the Fair Chance Housing Ordinance?**

The **Ron Dellums Fair Chance Access to Housing Ordinance** allows for people returning from incarceration to more easily find housing and/or live with their families. In general, the Ordinance prohibits housing providers from asking about and using criminal history and criminal background checks in their rental housing advertising, applications, or decision-making.

To see the entire Fair Chance Housing Ordinance, go to: [B.M.C. 13.106](#)

### **2. When did the Ordinance go into effect?**

The Ordinance became effective on March 10, 2020. However, there was a six-month grace period during which time housing providers would not be held liable by the City for a violation unless the City had first issued a prior warning. This grace period was extended to January 1, 2021. At this point, applicants who believe they have been unfairly denied can speak with their housing provider to find a resolution, file a claim with the city, or seek recourse in court.

### **3. Does the Ordinance apply to all types of housing? What are the exceptions?**

The Ordinance DOES NOT apply to the following types of housing situations:

1. Single-family homes, duplexes, triplexes, and ADUs (Accessory Dwelling Units) where the owner occupies one of the units.
2. Tenants who seek to add a co-tenant or a roommate. This exception only applies when a current tenant is seeking to add someone as a roommate AND that current tenant (not the landlord) wants to run a criminal background check. Roommates or groups of people moving in together on a new lease are protected under the Ordinance. Landlords can't run background checks on new groups of tenants and cannot run background checks on the people that current tenants choose. The only time that a Landlord can run a criminal background check is if they are physically residing in rental housing that's 3 units or under.
3. Units under a rental agreement allowing owners to move back to their home in accordance with B.M.C. 13.76.130 A.10.



Under certain circumstances and under the parameters of State law, the housing provider may review the State’s lifetime sex offender registry. See #7 for more information.

**4. Does the Ordinance apply to Section 8 or other Federal Housing Authority operated housing?**

Yes it does. However, housing providers of HUD-funded units may conduct a limited criminal background check if required by federal rules. The current HUD rules only automatically exclude applicants who were convicted of manufacturing methamphetamine or are on a lifetime sex offenders registry. However, the HUD-funded housing provider must first seek written consent from the applicant before conducting a criminal background check, provide the applicant with a copy of the background check, and provide the applicant with a chance to submit rebutting or mitigating information. Any optional or discretionary criminal background check not required by law is not allowed.

**5. Does the Ordinance apply to affordable housing units, including those operated by nonprofits?**

Yes, it does. However, for those units that receive HUD funding, the housing provider may conduct a limited criminal background check if required by federal rules. They must first seek written consent from the applicant, provide the applicant with a copy of the background check, and provide the applicant a chance to submit rebutting or mitigating information. Any optional or discretionary criminal background check not required by law is not allowed.

**6. What information do landlords have the right to access about applicants?**

Housing providers have a right to the information that’s *relevant* to entering into a rental agreement with an applicant—such as whether that person is going to abide by the terms of the lease or pay rent on time. Under the Fair Chance Housing Ordinance, housing providers can still ask for references, employment and income status and details, credit reports, eviction records, and other relevant information.

**7. Can housing providers review the State’s Lifetime Sex Offender Registry?**

Housing providers can review the State’s lifetime sex offender registry if they are concerned about the safety of persons at risk. However, a housing provider can only check the registry if they have already made a conditional offer to rent to the applicant and the applicant has agreed in writing to the check. In addition, the applicant must be provided the chance to provide rebutting or mitigating information.



**8. Does Fair Chance Housing prevent landlords from evicting tenants?**

No, the Fair Chance Housing ordinance does not prevent landlords from evicting tenants; however, landlords are not allowed to use criminal conviction history as a basis for eviction. People with a criminal history share the same rights and protections as any other tenant under Berkeley's Good Cause Eviction or Fair Housing laws.

**9. What are the options for taking legal action against a landlord?**

Anyone who believes that their rights under the Ordinance have been violated have several options.

1. File a complaint with the City of Berkeley and have the City hold a hearing on the claim. The complaint form can be found at [rentboard.berkeleyca.gov/Fair\\_Chance](http://rentboard.berkeleyca.gov/Fair_Chance)

For more information on filing a complaint and the hearing process, you can contact the **Berkeley Rent Stabilization Board** at (510) 981-7368 or by email at [rent@cityofberkeley.info](mailto:rent@cityofberkeley.info)

In addition, close family members of people with criminal records can file a complaint on their family member's behalf. Close family members do NOT need to be living in the unit in question in order to file a complaint for a formerly incarcerated family member. See #10 for more information.

2. File a lawsuit in court. There are free legal service lawyers available, and the Berkeley Rent Stabilization Board can provide referrals and can be contacted here: (510) 981-7368 or by email at [rent@cityofberkeley.info](mailto:rent@cityofberkeley.info)

3. The East Bay Community Law Center runs a dedicated Fair Chance Housing hotline. Call 510-548-4040 (Select Clean Slate - menu option 5). The Berkeley City Attorney also has the discretion to take legal action on behalf of the City of Berkeley against housing providers who they believe are in violation of the ordinance. You can contact the City Attorney at [attorney@cityofberkeley.info](mailto:attorney@cityofberkeley.info) or by calling (510) 981-6950.

**10. If I am a family member of someone formerly incarcerated, what action can I take?**

Family members who feel adverse action has been taken against them can take legal action. Adverse action includes being prevented from adding a close family member with a criminal history to their household, being told that they can no longer rent their unit due to an occupant having a criminal history, having a tenant subsidy reduced or shortened, or



being treated differently from other tenants or applicants (for example, requirements for higher rent or security deposit). See # 9 for the legal actions that can be taken.

Close family members also have the right to file a complaint on behalf of their formerly incarcerated family members. Family members do NOT need to be living in the unit a formerly incarcerated person is applying to or living in. For example, a family member who does not live in Berkeley can file a complaint with the city for their formerly incarcerated family member who is seeking housing in Berkeley.

Close family members include a spouse, domestic partners, parents, children, siblings, grandparents, grandchildren.

## **11. Where can I go to find additional information? Who can I ask if I still have questions?**

For more information from the city, contact:

**Berkeley Rent Stabilization Board:**

2125 Milvia Street, Berkeley, CA 94704

TEL: (510) 981-7368, TDD: (510) 981-6903, FAX: (510) 981-4910

Email: [rent@cityofberkeley.info](mailto:rent@cityofberkeley.info)

Website: [rentboard.berkeleyca.gov](http://rentboard.berkeleyca.gov)

For tenant legal services, contact any of the following organizations:

**Centro Legal de la Raza**

3022 International Blvd., 4th Floor

Oakland, CA 94601

510-437-1554

[tenantsrights@centrolegal.org](mailto:tenantsrights@centrolegal.org)

[centrolegal.org](http://centrolegal.org)

**East Bay Community Law Center**

2921 Adeline St.,

Berkeley, CA 94703

510-548-4040

[info@ebclc.org](mailto:info@ebclc.org)

[ebclc.org](http://ebclc.org)

**Eviction Defense Center**

350 Frank Ogawa Plaza, Suite 703

Oakland, CA 94612

510 452 4541

[evictiondefensecenteroakland.org](http://evictiondefensecenteroakland.org)

For mediation services, contact:

**SEEDS**

2530 San Pablo Ave. Suite A,

Oakland, CA 94702

510-548-2377

Email: [info@seedscrc.org](mailto:info@seedscrc.org)

[Seedscrc.org](http://Seedscrc.org)