



Fair Chance Housing FAQ for Rental Property Owners and Managers

1. What does the Fair Chance Housing Ordinance do?

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.

3. What does the ordinance prohibit rental housing providers from doing?

It is unlawful to do any of the following with regard to current or prospective tenants:

- Inquire about criminal history
- Indicate that persons with criminal backgrounds will not be considered for housing, including in rental advertisements, application materials, or verbally refuse to rent or terminate a tenancy based on criminal history
- Require disclosure or authorization for release of criminal history
- Demand higher security deposit or rental amount based on criminal history
- Refuse to allow the addition of an immediate family member based on the family member's criminal history
- Disqualify tenants from rental assistance programs such as Section 8 based on criminal history (subject to certain exceptions below)
- Treat rental applicants or tenants differently based on their criminal history

4. 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 criminal background checks on new groups of tenants and cannot run criminal 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, the housing provider may review the State's lifetime sex offender registry in compliance with state law. See #6 for more information.

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

Housing providers of **HUD-funded units** may conduct a limited criminal background check as required by federal rules. They must 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. Optional background checks are NOT allowed under the Ordinance.

6. 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 as required by federal rules. They must 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 criminal background check is not allowed.

7. Can housing providers review the State's lifetime sex offender registry?

Housing providers may review the state's lifetime sex offender registry if they are concerned about the safety of persons at risk. However, prior to checking the registry, a housing provider must first: 1) Include the lifetime sex offender screening requirement in writing in the rental application; 2) Have already made a conditional housing offer to the applicant subject to screening; 3) Inform the applicant in advance that the check will be made; and 4) Request the applicant's written consent or allow the applicant to withdraw



their application. In addition, the applicant must be provided with the chance to provide rebutting or mitigating information.

8. Does the Fair Chance Housing law prevent housing providers from evicting tenants?

No, the Fair Chance Housing ordinance does not prevent housing providers or housing providers from evicting tenants; however, housing providers 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 Just Cause Eviction or Fair Housing laws.

9. How is the Fair Chance Housing law enforced?

Formerly incarcerated applicants and tenants, as well as applicants and tenants seeking to add a formerly incarcerated person to their lease, may file a complaint with the City and/or file a lawsuit if they believe a housing provider has violated the Ordinance. In addition, close family members of formerly incarcerated residents can file a complaint with the City.

The City may issue civil penalties of at least \$1,000 and up to \$10,000 per violation. The City may also file an enforcement action in Court against a housing provider.

10. As a housing provider, don't I have the right to review all of the information that's available on a potential tenant?

Housing providers have a right to information that's *relevant* to entering into a rental agreement with an applicant—namely if the person is going to abide by the terms of the lease, and pay rent on time. The Fair Chance Housing Ordinance does not take away the housing provider's right to review references, employment and income status, credit reports, eviction records, and other relevant information.

11. Can housing providers state, “no criminal records,” “no felons,” “clean record required,” or something similar when advertising a unit for rent or talking to potential applicants?

No. Housing providers cannot advertise, publicize, or have a policy that automatically or categorically excludes applicants with an arrest record, conviction record, or criminal history from rental housing in the City of Berkeley.

12. Can housing providers ask, “Have you or any household member ever been convicted of a crime?” on a rental application or when talking to an applicant?

No. Housing providers or any person cannot inquire about or require an applicant to disclose this information. The only exceptions are when state or federal law requires



criminal background checks for certain types of subsidized housing. Even in those instances, Berkeley's Fair Chance Housing laws require those housing providers to follow due process protections. In addition, no optional criminal background checks are allowed.

13. As a housing provider do I have to notify potential applicants of their rights under this notice?

Yes. Housing Providers must include the City's Notice to Rental Applicants and Tenants prominently on their application materials, websites, and at any locations under their control that are frequently visited by applicants. The notice can be found on the City's website at [rentboard.berkeleyca.gov/Fair Chance](http://rentboard.berkeleyca.gov/Fair_Chance)

14. I'm with a third-party leasing/renting agency (i.e. Zillow, Onerent) and believe that the best way to verify an applicant's identity is through a criminal background check? Can my company do that?

No. The law prohibits ANY person, organization, or company that owns, manages, or leases housing in the City of Berkeley from requiring disclosure, inquiring about, or taking any adverse action based on arrest records, conviction records, or criminal history, unless an exclusion applies. The screening company may check the accuracy of the information through other means, such as a credit check.

15. 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

Website: rentboard.berkeleyca.gov

For mediation services, contact:

SEEDS

2530 San Pablo Ave. Suite A,

Oakland, CA 94702

510-548-2377

Email: info@seedscrc.org

Seedscrc.org

For rental housing provider guidance contact:



Berkeley Rent Stabilization Board

2125 Milvia Street, Berkeley, CA 94704

510-981-7368

rent@cityofberkeley.info

Berkeley Property Owners Association

2041 Bancroft Way, Suite 203

Berkeley, CA 94704

510-525-3666

Email: bpoa@bpoa.org

www.bpoa.org