



NOTICE TO RENTAL APPLICANTS AND TENANTS

FAIR CHANCE ACCESS TO HOUSING

BERKELEY LAW PROHIBITS RENTAL DISCRIMINATION BASED ON CRIMINAL HISTORY

On March 10, 2020, Berkeley City Council passed the Ronald V. Dellums Fair Chance Access to Housing Ordinance. ([B.M.C. 13.106](#); Ordinance No. 7,692-N.S.). This notice provides information on the Fair Chance Ordinance regarding 1) the rights of tenants and tenant applicants and the requirements of Housing Providers; 2) instructions for submitting a complaint to the City; 3) other types of enforcement actions; and 4) community resources.

WHAT ARE THE RESTRICTIONS AND REQUIREMENTS OF THE FAIR CHANCE HOUSING ORDINANCE?

Protections/Prohibitions (B.M.C. 13.106.040A, 13.106.050A)

Housing Providers are prohibited (with some exceptions and exemptions - see below) from:

- Inquiring about Criminal History
- Requiring disclosure of or authorization to release their Criminal History
- Basing an “Adverse Action” (defined below) on Criminal History
- Indicating that persons with criminal backgrounds will not be considered for housing, including in rental advertisements, application materials, or orally

What qualifies as an Adverse Action (B.M.C. 13.106.030A)

If a Housing Provider takes any of the following actions based on the Criminal or Conviction History of the Applicant or Tenant or Close Family Member:

- Failing or refusing to rent
- Terminating a tenancy
- Reducing a housing subsidy
- Treating an Applicant or tenant differently (e.g. requiring a higher security deposit)
- Disqualifying someone from a rental assistance program (e.g. section 8)
- Failing to allow a close family member (spouse, registered domestic partner, child, sibling, parent, grandparent, grandchild) with a criminal or conviction history to occupy rental unit while tenant lives there

Exceptions (B.M.C. 13.106.040B, C)

- Subsidized housing. If state or federal laws require a Housing Provider to exclude tenants with certain types of Criminal History (e.g. violent sex crimes, meth production in some subsidized housing), a Housing Provider must:
 - Inform an Applicant that they will check for certain types of Criminal History and



- Either obtain an Applicant's written consent, or allow the Applicant to withdraw the application.
- **Lifetime sex offenders.** Housing providers may review the State of California Department of Justice's Megan's Law website registry of lifetime sex offenders in order to protect a "person at risk" (Cal. Pen. Code § 290.46(j)(1)). Prior to doing so, the Housing Provider must:
 - Include a statement in the rental application informing Applicants of the sex offender screening requirement;
 - Have already determined that an Applicant meets all other rental criteria;
 - Provided the Applicant with a conditional rental agreement;
 - Informed the Applicant in advance of checking the sex offender registry; and
 - Either obtain written consent from the Applicant or give the Applicant an opportunity to withdraw their application prior to conducting a search.

Exemptions (B.M.C. 13.106.030K)

- Owner-occupied properties with 1-3 units total on property
- Units under a rental agreement allowing owners to move back to their home in accordance with B.M.C. 13.76.130 A.10
- Units occupied by existing tenant(s) seeking to sublet or add/replace roommates

Requirements for Housing Providers

- **Displaying this notice.** Housing Providers must prominently display this notice (English, Spanish, Chinese) in application materials, on websites, and at rental/leasing offices. (B.M.C. 13.106.050.)
- **Written notice and opportunity to respond.** If a Housing Provider takes "Adverse Action" (defined on page 1) based on Criminal History, the Housing Provider must provide the Applicant/tenant a written notice and an opportunity to respond. (B.M.C. 13.106.040E.)
 - The written notice must include:
 - The reason(s) for the Adverse Action,
 - Instructions on how to file a complaint with the City of Berkeley (affordable Housing Providers must also include filing deadlines),
 - A list of local services providers with contact information, and
 - A copy of the Criminal History report, background check, or other information received that is the basis of the decision.
 - The Applicant/tenant must be given the opportunity to:
 - Respond prior to the Adverse Action being taken and
 - Present any rebutting or mitigating information, such as evidence that the information is incorrect, was remedied, or otherwise should not be used as a basis for the Adverse Action.
- Affordable Housing Providers must submit an annual certificate of compliance with the City of Berkeley. (B.M.C. 13.106.050.)
- Housing Providers shall keep, for at least three years, any record of Criminal History obtained, and keep confidential to the maximum extent permitted by law, (B.M.C. 13.106.070.)



**HOW CAN I SUBMIT A COMPLAINT TO THE CITY
ABOUT A POSSIBLE VIOLATION OF THE FAIR CHANCE HOUSING ORDINANCE?**

Administrative Complaints to the (B.M.C. 13.106.90, A.R. 1.18)

- Complaints.
 - The City of Berkeley has designated the Berkeley Rent Stabilization Board to hear and decide complaints from tenants and tenant applicants (“Applicants”) who believe they have been discriminated against in violation of the Ordinance. A close family member (spouse, registered domestic partner, child, sibling, parent, grandparent, or grandchild) can submit a complaint on behalf of the Applicant.
 - Complaints are only heard with respect to Adverse Actions, and not other violations of the Ordinance. (See list of Adverse Actions on page 1.)
 - A complaint must be filed no more than one year from when the Applicant submitted a rental application to the Housing Provider or the date of the alleged discriminatory conduct, whichever is earlier.
 - The City’s complaint form must be used and include a copy of any supporting documents.
 - The complaint will be initially reviewed for sufficiency in alleging facts showing that there was a violation of the Ordinance. If the complaint is accepted, the Housing Provider will be notified and have the opportunity to file an answer to the complaint and participate in the hearing.
- Hearings.
 - A hearing will be scheduled within 90 calendar days from the date an acceptable complaint was submitted.
 - At the hearing, parties will be able to testify, present witnesses, have documents included in the record, and cross-examine the opposing party and their witnesses.
 - A party has the right to have an advocate of their choosing represent them at the hearing, and an interpreter if necessary and reasonably available.
- Decisions.
 - After the hearing, a written decision will be promptly mailed to all the parties. The decision will contain a determination of whether there were any Adverse Actions taken in violation of the Ordinance.
 - If any violations are found, an administrative citation (monetary penalty) will be imposed on the Housing Provider.
- Appeals.
 - If a party disagrees with the hearing officer’s determination, the party may file an appeal in court under California Code of Civil Procedure Section 1094.6 within 90 days of the final decision.
 - Before a decision is considered final, the Housing Provider is allowed to appeal the amount of the monetary fine with the City.



BESIDES FILING A COMPLAINT TO THE CITY, WHAT OTHER ACTIONS CAN BE TAKEN TO ENFORCE THE FAIR CHANCE HOUSING ORDINANCE?

Possible Violations that are not Adverse Actions

- Individuals may report possible violations that are not Adverse Actions (e.g. advertising that Providers will not rent to someone with a Criminal History) to the Berkeley Rent Stabilization Board's Public Information Unit.

City Attorney Actions (B.M.C. 13.106.100B, E, F)

- The City Attorney's Office can bring an action on behalf of the City and seek injunctive relief and civil penalties against the Housing Provider. The decision to do this is solely within the discretion of the City Attorney's Office.
- Housing Providers shall be subject to civil penalties of at least \$1,000 and up to \$10,000 for each violation.

Private Right of Action (13.106.100C, D, F)

- Individuals can sue in court for injunctive relief, actual damages or statutory damages up to three times the amount of one month's rent, punitive damages, and attorney's fees.

WHAT COMMUNITY RESOURCES ARE AVAILABLE TO ASSIST APPLICANTS AND TENANTS REGARDING AN ALLEGED VIOLATION OF THE FAIR CHANCE HOUSING ORDINANCE?

Counseling services, including with respect to the administrative complaint process

**Berkeley Rent Stabilization Board
Public Information Unit**

2125 Milvia Street, Berkeley, CA 94704
510-981-7368
rent@cityofberkeley.info

Limited scope advice for low-income tenants/tenant applicants

**East Bay Community Law Center
Clean Slate Unit**

1950 University Avenue, Suite 200, Berkeley, CA 94704
510-548-4040 (Select Clean Slate – menu option 5)

Outreach and community education

Just Cities

fairchance@justcities.work