



# NOTICE TO RENTAL PROPERTY OWNERS

## 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) types of enforcement actions; and 3) community resources.*

<p><b>WHAT ARE THE RESTRICTIONS AND REQUIREMENTS OF THE FAIR CHANCE HOUSING ORDINANCE?</b></p>
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#### **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 Dept. 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)). Before 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.9
- Units occupied by existing tenant(s) seeking to sublet or add/replace roommates

### **Requirements for Housing Providers**

- **Displaying the Notice to Applicants and Tenants.** Housing Providers must prominently display the "Notice to Applicants and Tenants" provided by the City of Berkeley (English, Spanish, and 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 intends on taking "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.)

<b>ENFORCEMENT OF THE FAIR CHANCE HOUSING ORDINANCE</b>
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**Administrative Complaints** (B.M.C. 13.106.90)

- The City of Berkeley has designated the Berkeley Rent Stabilization Board to hear and decide complaints from tenants and tenant applicants who believe they have been discriminated against in violation of the Ordinance.
- Only Adverse Actions (defined in page 1 above) are adjudicated in these types of proceedings.
- Housing Providers may file an answer to the complaint and participate in the hearing process.
- If any violations are found by the Hearing Officer, an administrative citation (monetary penalty) will be imposed on the Housing Provider.
- More information on the hearing and appeal process is provided in the instructions to the answer form provided by the City.

**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.



**Berkeley Rent Stabilization Board**  
2000 Center Street, Berkeley, CA 94704  
510-981-7368  
[rent@berkeleyca.gov](mailto:rent@berkeleyca.gov)

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<b>LOCAL RESOURCES FOR RENTAL PROPERTY OWNERS</b>
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**Berkeley Property Owners Association**

2041 Bancroft Way, Suite 203, Berkeley, CA 94704  
Phone: 510-525-3666  
[bpoa@bpoa.org](mailto:bpoa@bpoa.org)

**Alameda County Bar Association**

Legal Access Alameda  
1000 Broadway, Suite 290, Oakland, CA 94607  
Phone: 510-302-2222. Option 4  
[amarilis@acbanet.org](mailto:amarilis@acbanet.org)  
*Low-income Landlord Eviction Assistance clinic is offered weekly by appointment*

**East Bay Rental Housing Association**

3664 Grand Ave, Suite B, Oakland, CA 94610  
Phone: 510-893-9873  
[news@ebrha.com](mailto:news@ebrha.com)

**Berkeley Rent Stabilization Board**

**Public Information Unit**  
2000 Center Street, Suite 400, Berkeley, CA 94704  
510-981-7368  
[rent@berkeleyca.gov](mailto:rent@berkeleyca.gov)  
*Counseling services, including with respect to the administrative complaint process*