

FAIR CHANCE ACCESS TO HOUSING MATERIALS

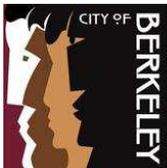
- 1. Initial Letter to Rental Property Owners (p. 2)**
- 2. Notice to Rental Applicants and Tenants (p. 5)**
- 3. Notice to Rental Property Owners (p. 10)**
- 4. Administrative Regulation 1.18 re: Complaints and Hearing Procedure (p. 15)**
- 5. Complaint Form (p. 21)**
- 6. Answer Form (p. 28)**
- 7. Annual Certification Form for Affordable Housing Providers (p. 35)**

Forthcoming:

- FAQs**
- Just Cities brochure.**

1. Initial Letter to Rental Property Owners

Mailed out in October 2020



City of Berkeley
2180 Milvia Street, Berkeley, CA 94704

NOTICE TO RENTAL PROPERTY OWNERS:

BERKELEY LAWS PROHIBIT USE OF CRIMINAL HISTORY AND/OR CRIMINAL BACKGROUND CHECKS IN TENANT SELECTION PROCESS AND DISCRIMINATION BASED ON SOURCE OF INCOME

ATTENTION: On March 10, 2020, Berkeley City Council passed the “Fair Chance Access to Housing Ordinance” (Ordinance No. 7,692-N.S.). The Ordinance makes it unlawful for Berkeley landlords to consider criminal history in tenant screening for rental housing.

Please visit www.cityofberkeley.info/fairchance.aspx to obtain a copy of the Fair Chance Access to Housing Ordinance and required materials for applicants and tenants.

REMINDER: On July 25, 2017, Berkeley City Council added language to BMC 13.31 (Discrimination in Property Rental) to prohibit discrimination based on source of income.

PLEASE BE ADVISED THAT 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)
- Take any other negative action against applicants/tenants based on criminal history
- Refuse to rent to someone based on their source of income - this includes income in the form of a housing voucher such as Section 8 or Shelter Plus Care.

INFORMATION ON FAIR CHANCE HOUSING ORDINANCE

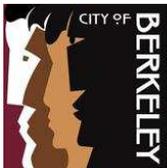
All housing application materials must include an official *Notice to Applicants/Tenants regarding their rights*. The notice should be prominently included in any application material, websites, and any other location frequently visited by housing applicants. An official Notice will be available on the City’s Fair Chance webpage.

To request a copy of this information in Chinese/Spanish, please visit: www.cityofberkeley.info/fairchance.aspx

如果您想要此文件的中文版本,請聯絡: www.cityofberkeley.info/fairchance.aspx

Si desea solicitar una copia de esta información en español, póngase en contacto con:

www.cityofberkeley.info/fairchance.aspx



City of Berkeley
2180 Milvia Street, Berkeley, CA 94704

Please Note: Landlords considering taking adverse action (such as refusing to rent to an applicant) as a result of criminal history are required to provide applicants/tenants with notice and an opportunity to respond.

Landlords considering taking any adverse action against an applicant/tenant based on criminal history (such as refusing to rent to the tenant or refusing to add a tenant's family member) are now required to provide the applicant/tenant with written notice and an opportunity to respond before any final decision is made. This is due to the fact that criminal background checks and reporting services frequently provide inaccurate or incomplete information.

Written notice must include:

- The reasons for denial or other action
- Instructions on how to file a complaint with the City
- A list of local legal services
- A copy of the criminal history report, background check, or other information received that is the basis of the decision

Applicant/tenant must be given opportunity to:

- Respond to the information
- Present any rebutting or mitigating information, such as evidence that the information is incorrect, was remedied, or otherwise should not be used to deny the applicant housing

LANDLORDS FOUND TO BE IN VIOLATION OF THE ORDINANCE ARE SUBJECT TO CIVIL AND CRIMINAL PENALTIES

Any landlord found to be in violation of the Ordinance shall be subject to administrative fines of at least \$1,000 and up to \$10,000 per violation, civil damages including three times the greater of actual damages or one month's rent, punitive damages, attorneys fees and costs, and injunctive relief. Any housing provider who knowingly and willfully violates the Ordinance shall also be guilty of a criminal misdemeanor.

You may consult with an attorney for more information. A copy of the Ordinance, resources for Property Owners and Tenants and more information is available on the City of Berkeley's Fair Chance for Housing webpage: www.cityofberkeley.info/fairchance.aspx.

To request a copy of this information in Chinese/Spanish, please visit: www.cityofberkeley.info/fairchance.aspx

如果您想要求此文件的中文版本,請聯絡: www.cityofberkeley.info/fairchance.aspx

Si desea solicitar una copia de esta información en español, póngase en contacto con:

www.cityofberkeley.info/fairchance.aspx

2. Notice to Rental Applicants and Tenants

Required to be included in rental application materials and prominently displayed on websites, and at any housing provider locations that are frequently visited by applicants.



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

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



Berkeley Rent Stabilization Board

2125 Milvia Street, Berkeley, CA 94704

510-981-7368

rent@cityofberkeley.info

- 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.)



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

**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.



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

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

3. Notice to Rental Property Owners



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

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.

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



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

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.10
- 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



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

- 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.)

ENFORCEMENT OF THE FAIR CHANCE HOUSING ORDINANCE

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

LOCAL RESOURCES FOR RENTAL PROPERTY OWNERS

Berkeley Property Owners Association

2041 Bancroft Way, Suite 203, Berkeley, CA 94704
Phone: 510-525-3666
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
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

Berkeley Rent Stabilization Board

Public Information Unit

2125 Milvia Street, Berkeley, CA 94704
510-981-7368
rent@cityofberkeley.info
Counseling services, including with respect to the administrative complaint process

4. Administrative Regulation 1.18 re: Complaints and Hearing Process

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 6, 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>TO BE REVIEWED/REVISED: Every 2 years</p>	<p>Approved by:</p> <p>_____</p> <p style="text-align: center;">Department Director</p> <p>_____</p> <p style="text-align: center;">City Manager</p>
--	--

5. Complaint Form

CITY OF BERKELEY
INSTRUCTIONS FOR
COMPLAINT OF ADVERSE ACTION AGAINST HOUSING PROVIDER
FAIR CHANCE HOUSING ORDINANCE

GENERAL INFORMATION

Under the Ronald V. Dellums Fair Chance Access to Housing Ordinance (Berkeley Municipal Code Chapter 13.106) (the “Ordinance”), housing providers are prohibited from discriminating against tenants and prospective tenants based on their criminal history. The City of Berkeley hears and decides administrative complaints from tenants or prospective tenants that they have been discriminated against in violation of the Ordinance. Close family members (spouse, registered domestic partner, child, sibling, parent, grandparent, or grandchild) can submit a complaint on their behalf.

WHEN YOU CAN FILE. A complaint must be filed no more than one year from when the tenant or prospective tenant submitted an application to the housing provider or the date of the violation, whichever is earlier.

EXCEPTIONS.

Some types of housing are exempt from the Ordinance, including the following types of housing units:

- 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
- 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.

In addition, 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.

Before submitting a complaint, you may find it helpful to talk with a Rent Board counselor, who are available to answer questions about the complaint process, in person or remotely. See contact information below.

SUBMITTING THE COMPLAINT

Submit the complaint, a copy of any supporting documentation, and a completed proof of service (provided on the last page of this form to confirm that you delivered the documents to the housing provider you are complaining of) to the following address:

CITY OF BERKELEY
RENT STABILIZATION BOARD
2125 Milvia Street, Berkeley, CA 94704
TEL: (510) 981-7368 (981-RENT) TDD: (510) 981-6903 FAX: (510) 981-4940
EMAIL: rent@cityofberkeley.info INTERNET: www.cityofberkeley.info/rent

AFTER THE COMPLAINT IS FILED

The complaint will be initially reviewed to determine whether it contains enough factual allegations to show that there was discriminatory conduct in violation of the Ordinance. If a complaint is not clear enough to allege facts that would constitute a violation, you will have 14 days to amend your complaint. If any amendments are not sufficient to cure the defects in your complaint, it will be dismissed without a hearing.

If the complaint is accepted, the housing provider will be notified and have the opportunity to file an objection and participate in a hearing. The hearing will be scheduled within 90 days from the date the complaint was submitted.

The hearing is an official administrative proceeding but is less formal than a court trial. Parties will testify, present witnesses, have documents included in the record, and cross-examine the opposing party and their witnesses.

After the hearing, a written decision will be mailed to all the parties. The decision will contain a determination of whether there were any violations of the Ordinance and include any administrative citations imposed on the housing provider. If you disagree with the decision, you may file an appeal in court under California Code of Civil Procedure 1094.6 within 90 days of the final decision. Before a decision is considered final, the housing provider is allowed to appeal any administrative citation that was issued by the hearing officer.

**CITY OF BERKELEY
COMPLAINT OF ADVERSE ACTION AGAINST HOUSING PROVIDER
FAIR CHANCE HOUSING ORDINANCE**

COMPLAINT NO. FC- _____

A. Property Address: _____ Unit No. _____

B. Tenant/Prospective Tenant Information:

Name _____

Mailing address _____

City _____ State _____ Zip _____

Phone (____) _____ Fax (____) _____

Email address _____ @ _____

If you are a close family member (spouse, registered domestic partner, child, sibling, parent, grandparent, or grandchild) of the tenant or prospective tenant who was discriminated against by the housing provider, please complete C below. If not, skip C and go to D.

C. Close Family Member Information:

Name _____

Mailing address _____

City _____ State _____ Zip _____

Phone (____) _____ Fax (____) _____

Email address _____ @ _____

Relation to Tenant/Prospective Tenant: _____

D. Housing Provider's Information:

Name _____

Mailing address _____

City _____ State _____ Zip _____

Phone (____) _____ Fax (____) _____

Email address _____ @ _____

G. Supporting Documentation:

Attach a copy of any and all documents in support of your claim that a housing provider took adverse actions against the tenant or prospective tenant based on criminal history in violation of the Ordinance. Supporting documentation is not required in order to file a complaint.

H. Certification: I declare under penalty of perjury under the laws of the State of California that the information stated above, and in any attachments, is true and correct.

Signature _____ Date _____

Printed Name _____

PROOF OF SERVICE

I AM A RESIDENT OF _____ COUNTY AND WAS, AT THE TIME OF SERVICE, OVER EIGHTEEN YEARS OF AGE. ON _____ (DATE), I SERVED ONE COPY OF THE FOLLOWING DOCUMENT(S): _____

BY: (CHECK APPROPRIATE BOX)

DELIVERING THE DOCUMENTS IN PERSON TO THE FOLLOWING INDIVIDUAL(S):
[PRINT NAME OF EACH PARTY SERVED:]

PLACING THE DOCUMENTS, ENCLOSED IN A SEALED ENVELOPE WITH FIRST-CLASS POSTAGE FULLY PAID, INTO A U.S. POSTAL SERVICE MAILBOX, ADDRESSED AS FOLLOWS:
[PRINT NAME AND ADDRESS AS SHOWN ON ENVELOPE OF EACH PARTY SERVED:]

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

(SIGNATURE)

(DATE)

(PRINTED NAME)

6. Answer Form

**CITY OF BERKELEY
ANSWER TO COMPLAINT OF ADVERSE ACTION AGAINST HOUSING PROVIDER
FAIR CHANCE HOUSING ORDINANCE**

Deadline to file answer: _____

GENERAL INFORMATION

A complaint has been filed against you to seek a determination as to whether you have discriminated against a tenant or prospective tenant in violation of the Ronald V. Dellums Fair Chance Access to Housing Ordinance (Berkeley Municipal Code (B.M.C.) Chapter 13.106) (the “Ordinance”). The complaint process includes a hearing before a hearing officer, who will determine if there were any violations. If any violations are found, an administrative citation may be imposed on you.

If you wish to object to the complaint and participate in the hearing process, you must complete this answer form and submit it before the deadline date indicated above, which is 30 days from the date the answer form was mailed to you.

Under the Ordinance, housing providers are prohibited from discriminating against tenants and prospective tenants based on their criminal history. The City of Berkeley hears and decides administrative complaints from tenants or prospective tenants that they have been discriminated against in violation of the Ordinance. Close family members (spouse, registered domestic partner, child, sibling, parent, grandparent, or grandchild) can submit a complaint on their behalf.

Before submitting a complaint, you may find it helpful to talk with a Rent Board counselor, who are available to answer questions about the complaint process, in person or remotely. See contact information below.

SUBMITTING THE ANSWER

Submit the answer, a copy of any supporting documentation, and a completed proof of service (provided on the last page of this form to confirm that you delivered the documents to the complainant) to the following address:

CITY OF BERKELEY
RENT STABILIZATION BOARD
2125 Milvia Street, Berkeley, CA 94704
TEL: (510) 981-7368 (981-RENT) TDD: (510) 981-6903 FAX: (510) 981-4940
EMAIL: rent@cityofberkeley.info INTERNET: www.cityofberkeley.info/rent

AFTER THE ANSWER IS FILED

A hearing will be scheduled within 90 days from the date the complaint was submitted.

The hearing is an official administrative proceeding but is less formal than a court trial. Parties will testify, present witnesses, have documents included in the record, and cross-examine the opposing party and their witnesses.

After the hearing, a written decision will be mailed to all the parties. The decision will contain a determination of whether there were any violations of the Ordinance and include any administrative citations imposed on the housing provider.

If you disagree with the decision, you may file an appeal in court under California Code of Civil Procedure 1094.6 within 90 days of the final decision. Before a decision is considered final, you are allowed to appeal the amount of the fine under the administrative citation by completing a request for hearing form and returning it to the City. For more instructions and to download the hearing form, go to tinyurl.com/5unnhtxs. The request for hearing must be received or postmarked no later than 21 days after the date of the hearing decision containing the citation.

**CITY OF BERKELEY
ANSWER TO COMPLAINT OF ADVERSE ACTION AGAINST HOUSING PROVIDER
FAIR CHANCE ORDINANCE**

COMPLAINT NO. FC- _____

A. Housing Provider's Information:

Name _____

Mailing address _____

City _____ State _____ Zip _____

Phone (____) _____ Fax (____) _____

Email address _____ @ _____

B. Claim of Exemption or Inapplicability of the Ordinance:

Check whether any of the following claims apply.

- I am not a housing provider as defined in B.M.C. Section 13.106.30 L.
- The property is a single-family dwelling where one or more of the owners occupies the dwelling as their principal residence.
- The property is a single-family dwelling with an accessory dwelling unit, as defined in B.M.C. Section 23F.04.010, where either the main unit or the accessory dwelling unit is occupied by one or more owners as their principal residence.
- The property is a duplex or triplex where one of the units is occupied by one or more owners as their principal residence.
- The owner occupied the rental unit as their principal residence and has the right to recover possession of the unit for their occupancy as a principal residence under an existing rental agreement with the current tenant(s) pursuant to B.M.C. Section 13.76.130 A.10.
- The unit is occupied by a tenant seeking to replace an existing co-tenant, add an additional co-tenant, or sublet the unit, and remain in occupancy.
- Other reasons. The Ordinance does not apply to me because of the following reasons (attach additional pages if needed):

C. Objections/Defenses:

Check any of the objections or defenses to the claims set forth in the complaint:

- The date when the complaint was filed is more than a year after the housing application was submitted to the housing provider or when the alleged conduct in violation of the Ordinance occurred, whichever is earlier.
- The complainant was not a tenant or prospective tenant or their close family member (spouse, registered domestic partner, child, sibling, parent, grandparent, or grandchild).
- The housing provider did not try to obtain information regarding the tenant or prospective tenant’s criminal history, whether directly or indirectly.
- The housing provider took no adverse action against the tenant or prospective tenant. An adverse action means to take one of the following actions:
 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 a tenant or prospective tenant differently from other tenants or prospective 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.
 6. Failing to permit a tenant’s close family member (spouse, registered domestic partner, child, sibling, parent, grandparent, or grandchild) to occupy a rental unit while the occupying tenant remains in occupancy.
- The housing provider did not base the adverse action taken on the tenant or prospective tenant’s criminal or conviction history.
- The housing provider was complying with federal or state laws that exclude tenants based on certain types of criminal history after providing adequate notice and obtaining written consent from the tenant or prospective tenant. *See* B.M.C. Section 13.106.40 D and E for additional requirements.
- The housing provider was complying with state law in order to protect persons at risk pursuant to California Penal Code Section 290.46(j)(1) by reviewing the State registry of lifetime sex offenders after 1) providing notice of the screening requirement in writing in the rental application; 2) determining that the prospective tenant was otherwise qualified for rental housing; 3) providing a rental agreement conditioned on the prospective tenant meeting the housing provider's criminal history and other qualifying criteria; and 4) obtaining written consent of the prospective tenant that the sex offender registry will be checked. *See* B.M.C. Section 13.106.40 D and E for additional requirements.
- Other reasons. State any other objection or defense to the claims raised in the complaint (attach additional pages if needed):

PROOF OF SERVICE

I AM A RESIDENT OF _____ COUNTY AND WAS, AT THE TIME OF SERVICE, OVER EIGHTEEN YEARS OF AGE. ON _____ (DATE), I SERVED ONE COPY OF THE FOLLOWING DOCUMENT(S): _____

BY: (CHECK APPROPRIATE BOX)

DELIVERING THE DOCUMENTS IN PERSON TO THE FOLLOWING INDIVIDUAL(S):
[PRINT NAME OF EACH PARTY SERVED:]

PLACING THE DOCUMENTS, ENCLOSED IN A SEALED ENVELOPE WITH FIRST-CLASS POSTAGE FULLY PAID, INTO A U.S. POSTAL SERVICE MAILBOX, ADDRESSED AS FOLLOWS:
[PRINT NAME AND ADDRESS AS SHOWN ON ENVELOPE OF EACH PARTY SERVED:]

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

(SIGNATURE)

(DATE)

(PRINTED NAME)

7. Annual Certification Form for Affordable Housing Providers

Annual Certification Form for Affordable Housing Providers

As a provider of Affordable Housing, I am certifying the following

- I serve as the Chief Executive Officer of _____ (Name of organization).
- We are familiar with the City of Berkeley's Ron Dellums Fair Chance Access to Housing Ordinance (Ordinance No. 7,692-N.S.), codified in Chapter 13.106 of the Berkeley Municipal Code.
- We have been in full compliance with the Fair Chance Access to Housing Ordinance, including abiding by the following terms:
 - We have not produced or disseminated any advertisement related to housing that expresses, directly or indirectly, that any person with a criminal history will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by State or Federal law.
 - We have not inquired about any applicant's criminal history on our application, nor run a criminal background check on any applicant during our application processes, nor have we asked applicants to consent to a criminal background check as a part of our application or application process.
 - We have not evicted any tenant on the sole basis of holding a criminal record
 - We are aware of the rights of tenants, as well as family members of formerly incarcerated individuals, to file a complaint with the City or take legal action if they are prohibited from adding a new tenant with a criminal history or a family member with a criminal history to their lease on the sole basis of criminal history.
 - We are aware that family members of formerly incarcerated individuals may file a complaint with the City on behalf of their formerly incarcerated family member. Said family member need not be applying to nor reside in the unit in question.
 - We are aware that we may check the State's Lifetime Sex Offender Registry during our selection process. We are aware that due process protections entail that we ask for and receive consent from applicants before checking the State's Lifetime Sex Offender Registry, and allow applicants the opportunity to withdraw their applications if they desire.
 - We are aware that we may run limited criminal background checks for HUD funded units when required by federal or state law. We are aware that due process protections entail that we ask for and receive consent from applicants to run a criminal background check, and allow applicants the opportunity to withdraw their applications if they desire..
 - We have included the Notice to Rental Applicants and Tenants provided by the City of Berkeley prominently on our application materials, websites and any other locations under our control that are frequently visited by applicants. The notice provided by the City includes a description of the restrictions and requirements of

the Ordinance, instructions for submitting a complaint to the City regarding a violation of this Ordinance, and information about community resources available to assist an applicant in connection with a violation of the Ordinance.

- We shall maintain a record of any criminal history obtained for any applicant for housing for a period of at least three years. To the maximum extent permitted by law, any information obtained regarding an applicant's criminal history shall remain confidential.
- If applicable, we have complied with requests by the City to provide records for purposes of demonstrating compliance with requirements of this Ordinance.
- We have not interfered with, restrained, or denied the exercise of, or the attempt to exercise, any right protected under the Fair Chance Access to Housing Ordinance, or taken any adverse action against any person who has exercised or attempted to exercise any rights protected under the Ordinance.

I declare under penalty of perjury under the laws of the City of Berkeley that the foregoing is true and correct.

Signature

Date

Print Name

Title