

**CITY OF SEATTLE**

**RESOLUTION \_\_\_\_\_**

..title

A RESOLUTION promoting the use of an individualized tenant assessment using the Fair Housing Act’s discriminatory effects standard to avoid Fair Housing Act Violations when criminal history is used as a screening criteria in the landlord screening process.

..body

WHEREAS, the United States Department of Housing and Urban Development (HUD) has issued guidance in determining whether the use of criminal history by a housing provider to deny housing opportunities results in unjustified discriminatory effects, affirming that restrictions based on a characteristic not protected under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), 42 U.S.C 3601, *et seq.*, such as criminal history, could still violate the Act if the burden of the restriction fell more often on members of one protected class over another, and stating that “[housing providers’s] selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics violates the Act”; and

WHEREAS, in September 2014 the City Council adopted Resolution 31546, in which the Mayor and Council jointly convened the Seattle Housing Affordability and Livability Agenda (HALA) Advisory Committee, resulting in the July 2015 Final Advisory Committee Recommendations and the Mayor’s *Housing Seattle: A Roadmap to an Affordable and Livable City*, which outline solutions to address Seattle’s housing affordability crisis; and

WHEREAS, in October 2015 the City Council adopted Resolution 31622, which declared the City Council’s intent to expeditiously consider strategies recommended by the HALA Advisory Committee, including fair access to housing for people with criminal records because they face significant barriers to securing housing; and

1 WHEREAS, nearly 1/3 of the U.S. population has a criminal record, with an average of 650,000  
2 persons released annually since 2004 from federal and state prisons; and

3 WHEREAS, African Americans are four percent of Washington’s population but account for 18  
4 percent of the state’s prison and jail population<sup>1</sup>; and Native Americans are two percent  
5 of the state population but account for five percent of the state’s prison and jail  
6 population<sup>2</sup>; and

7 WHEREAS, the Fair Housing Act prohibits intentional discrimination in housing practices as  
8 well as housing practices resulting in unjustified discriminatory effects without regard to  
9 the intent to discriminate (Disparate Impact Rule), 24 CFR Part 100, and in 2014, fair  
10 housing testing conducted by the Seattle Office for Civil Rights found that African  
11 American and Latino/a testers, who posed as prospective renters, were told about  
12 criminal background and credit history checks more frequently than white testers; and

13 WHEREAS, the Disparate Impact Rule creates a burden-shifting paradigm to determine  
14 unjustified discriminatory effects: (1) The charging party must establish a prima facie  
15 case of disparate impact by showing a policy or practice causes a discriminatory effect on  
16 a group of persons on the basis of a protected class in the Fair Housing Act (which is  
17 substantially equivalent to Seattle’s Open Housing Ordinance, Seattle Municipal Code  
18 Chapter 14.08); (2) The burden shifts to the respondent, who must prove that the  
19 challenged practice is necessary to achieve one or more substantial, legitimate, non-  
20 discriminatory interests; and (3) The charging party can still establish liability if those  
21 interests could be served by a practice with less discriminatory effect; and

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<sup>1</sup> [http://www.prisonpolicy.org/graphs/2010percent/WA\\_Blacks\\_2010.html](http://www.prisonpolicy.org/graphs/2010percent/WA_Blacks_2010.html)

<sup>2</sup> [http://www.prisonpolicy.org/graphs/2010percent/WA\\_American\\_Indian\\_2010.html](http://www.prisonpolicy.org/graphs/2010percent/WA_American_Indian_2010.html)

1 WHEREAS, the City Council recognizes that landlords are responsible for providing resident  
2 safety and protection of property, but screening and eligibility policies and practices that  
3 categorically exclude any person with a record of arrest or conviction from obtaining or  
4 even applying for housing does not accurately distinguish criminal conduct that  
5 demonstrates a risk to resident safety and property from conduct that does not pose such a  
6 risk; and

7 WHEREAS, the HUD guidance recognizes that “[a] housing provider must, however, be able to  
8 prove through reliable evidence that its policy or practice of making housing decisions  
9 based on criminal history actually assists in protecting resident safety and/or property.  
10 Bald assertions based on generalizations or stereotypes that any individual with an arrest  
11 or conviction record poses a greater risk than any individual without such a record are not  
12 sufficient to satisfy this burden.”; NOW, THEREFORE,

13 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE**  
14 **MAYOR CONCURRING, THAT:**

15 Section 1. The City Council is committed to passing an ordinance as soon as practicable  
16 that ensures that people with criminal history have fair and equitable access to housing while  
17 protecting the rights and interests of property owners.

18 Section 2. The City Council intends to work with those most impacted by the use of  
19 criminal history in screening criteria as well as property owners to help guide the content of such  
20 an ordinance.

21 Section 3. The City Council recognizes that landlord screening criteria related to criminal  
22 history to determine a tenant’s eligibility or suitability to obtain housing can result in disparate  
23 impacts on racial minorities. The City Council prioritizes policies leading to racial equity

1 outcomes in housing, which include promotion of the United States Department of Housing and  
2 Urban Development (HUD) guidance cautioning against a landlord's policy or practice of  
3 categorically excluding individuals from housing based on criminal history.

4 Section 4. The City Council endorses practices that are consistent with HUD's guidance;  
5 namely, that landlords should only implement practices excluding persons from housing based  
6 on criminal history when those practices are based upon reliable evidence that the policy actually  
7 assists in promoting resident safety and protecting property, and are specifically tailored to  
8 address resident safety and protection of property which includes conducting an individualized  
9 tenant assessment taking into account specific factors to determine whether there is a proper  
10 justification for exclusion related to tenancy requirements:

- 11 A. Whether a conviction followed an arrest;
- 12 B. The nature and severity of the crime;
- 13 C. The conduct underlying the conviction;
- 14 D. The length of time since conviction;
- 15 E. The age of the individual at the time of conviction;
- 16 F. What the convicted person has done since the conviction; and
- 17 G. Evidence of rehabilitation.

18 Section 5. The City Council endorses *Selecting a Tenant Screening Agency: Guideline*  
19 *for Property Management in Affordable Housing*, the tenant screening agency guidance issued  
20 by the Seattle Office of Housing in 2015 (Attachment A to this resolution) to ensure that  
21 landlords are using accurate and consistent criminal record information, unlawful detainer  
22 information consistent with Engrossed Senate Bill 6413, passed by the Washington State  
23 Legislature in March 2016 (Attachment B to this resolution), and *Recommended Best Practices*

1 *To Do and Not Do in Drafting and Implementing a Criminal Conviction Screening Policy,*  
2 adapted from the National Multifamily Housing Council’s white paper *Best Practices To Avoid*  
3 *Disparate Impact Liability* (Attachment C to this resolution).

4         Section 6. The City Council recommends that a landlord should not rely on records that  
5 cannot be reported by consumer reporting agencies under State law.

6         Section 7. The City Council commends the Seattle Office for Civil Rights’s efforts to  
7 proactively identify instances of housing discrimination and to enforce fair housing laws through  
8 testing, landlord and applicant education, investigation of charges, and other means. The City  
9 Council supports a continued effort to prevent and investigate housing discrimination and intends  
10 to pursue innovative enforcement measures.

11         Section 8. The City Council requests that, when investigating any complaint of housing  
12 discrimination based on the use of criminal history, the Seattle Office for Civil Rights determines  
13 whether there is disparate impact, an intent to discriminate, or unjustified discriminatory effects  
14 from the use of criminal history.

1           Adopted by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2016,  
2 and signed by me in open session in authentication of its adoption this \_\_\_\_\_ day of  
3 \_\_\_\_\_, 2016.

4 \_\_\_\_\_  
5           President \_\_\_\_\_ of the City Council

6           The Mayor concurred the \_\_\_\_\_ day of \_\_\_\_\_, 2016.  
7 \_\_\_\_\_  
8           Edward B. Murray, Mayor

9           Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.  
10 \_\_\_\_\_  
11           Monica Martinez Simmons, City Clerk

12 (Seal)

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14 Attachments:  
15 Attachment A – Selecting a Tenant Screening Agency: Guideline for Property Management in  
16 Affordable Housing  
17 Attachment B – Engrossed Senate Bill 6413  
18 Attachment C – Recommended Best Practices To Do and Not Do in Drafting and Implementing  
19 a Criminal Conviction Screening Policy