

July 24, 2017

MEMORANDUM

To: Civil Rights, Utilities, Economic Development & Arts Committee
From: Asha Venkataraman, Council Central Staff
Subject: Council Bill 119015: Fair Chance Housing Legislation

On June 21, the Executive transmitted Council Bill (CB) 119015. Referred to as Fair Chance Housing this legislation would limit a landlord's use of a prospective tenant's criminal history. The bill is a result of a Housing Affordability and Livability Agenda (HALA) recommendation to lower barriers to housing for persons with criminal histories, and a stakeholder process to determine how to implement that HALA recommendation.

The Seattle Office for Civil Rights (SOCR) briefed the Civil Rights, Utilities, Economic Development & Arts Committee (CRUEDA) at the July 13 public hearing on CB 119015. During that public hearing, the CRUEDA committee heard from a panel of interested parties and the public. The July 25 CRUEDA committee agenda includes a discussion and a possible vote on CB 119015. If CRUEDA does not vote the bill out of committee on July 25, a committee vote is expected on August 8. Full Council will vote on August 14. As currently drafted, CB 119015 would be effective 150 days (about 5 months) after passage, to allow for the development of Director's Rules for implementation.

BILL SUMMARY

CB 119015 creates a new section 14.09 of the Seattle Municipal Code (SMC), containing five major elements: (1) Limitations on a landlord's use of a prospective tenant's criminal history; (2) notice and consumer reporting requirements; (3) exclusions; (4) enforcement; and (5) other initiatives to decrease bias.

1. Limitations on a landlord's use of a prospective tenant's criminal history

CB 119015 limits the use of criminal history in three ways. First, landlords may not use language in advertisements categorically excluding those with arrest or conviction records.

Second, landlords may not ask about or deny housing based on:

- arrests not leading to convictions;
- pending criminal charges;
- convictions that have been expunged, sealed, or vacated;
- juvenile records, including listing of a juvenile on a sex offense registry; and
- convictions older than two years from the date of the tenant's application.

Third, a landlord may deny housing to, or otherwise take an adverse action against, an applicant or tenant based on a conviction record within two years of the date of application or based on the prospective adult tenant's status on a sex offender registry only if the landlord has a legitimate business reason for doing so. The legitimate business reason must be based on a nexus to safety of residents on the property and/or protecting property, considering:

- the nature or severity of the conviction;
- the number and types of convictions;
- the time elapsed since the date of conviction;
- the age of the individual at the time of the conviction;
- evidence of good tenant history before and/or after the conviction occurred; and
- any supplemental information related to the individual's rehabilitation, good conduct, and facts or circumstances surrounding the conviction provided by the individual.

2. Notice and consumer reporting agency requirements

Landlords must include on a rental application whether the landlord screens for conviction records and what screening criteria the landlord will apply. The notice must also include a statement that the landlord will consider all qualified applicants with criminal histories and that the applicant may provide information related to their rehabilitation, good conduct, and facts or circumstances surrounding the conviction.

CB 119015 also requires that landlords must provide the prospective tenants the name and address of the any consumer reporting agency the landlord uses for screening. The landlord must notify the prospective tenants of their rights to (a) get a free copy of the report if a denial or other adverse action occurs, and (b) dispute the report's accuracy. The bill also prohibits retaliation for exercising or trying to exercise any of the rights granted in section 14.09.

3. Exclusions

CB 119015 contains exclusions for certain types of housing and accounts for federal requirements. The bill does not apply to a denial of tenancy when required by federal law, including when federally funded housing is required to ban persons convicted of methamphetamine production in federally assisted housing and persons subject to lifetime sex offender registration. The bill does not apply to:

- shared occupancy units;
- buildings with four or fewer living units where the owner lives in one unit; and
- accessory dwelling units (ADUs) and detached accessory dwelling units (DADUs) where the owner lives on the premises or lot.

4. Enforcement

The enforcement provisions of CB 119015 are the same as those currently codified in Title 14 for other violations enforced by SOCR. This process includes enforcement of violations by SOCR through individual complaints or a Director's charge, leading to investigation, findings of fact and determination of presence or absence of reasonable cause, appeals, conciliation, complaints to the Hearing Examiner, and civil penalties.

5. Other initiatives to decrease bias

Lastly, implementation of Section 14.09 will include SOCR conducting fair housing testing and the creation of a Fair Housing Home Program to train landlords on reducing of racial bias and other protected class bias. A landlord completing the program will receive a certification. Landlords participating in a pre-settlement finding or conciliation agreement will be required to participate. The bill also commits the City to advocating at the state level to reduce the collateral impacts of criminal convictions and explore additional mechanisms to decrease barriers to housing through SOCR's convening of the Re-Entry Taskforce.

PROPOSED AMENDMENTS

The text of the amendments discussed below are provided in Attachment A to this memo.

1. Technical and clarifying amendments recommended by SOCR (Councilmember Herbold)

In addition to correcting typos and ensuring consistent syntax, this proposed amendment does several things:

First, it adds a definition of "registry information" to clarify the information a landlord can look at when considering a conviction underlying sex offender registration. The ability to look at the underlying conviction is limited to information on the sex offender registry and does not allow the landlord to consider convictions otherwise prohibited when showing a legitimate business reason for taking an adverse action. In accordance with this addition, the amendment also revises any reference to registration status or information to "registry information."

Second, the amendments incorporate an omission regarding retaliation using immigration status into the bill. They include as prohibited retaliation engaging in unfair immigration related practices, which is communication to a person the willingness to report or actually reporting suspected citizenship or immigration status to a government agency because a person is exercising their rights codified in the legislation. This provision is already present throughout many sections of the SMC, and it was inadvertently omitted in the original transmittal of the bill.

Third, the original exclusion language in 14.09.110.C allowed for an interpretation where the bill excluded all single-family dwellings altogether, instead of the intended interpretation to cover single family dwellings where the owner shares occupancy. The

revisions to the language in C as well as in B, D, and E serve to sharpen the language to ensure the proper intention is reflected through the language.

2. Recital on screening requirements (Councilmember Herbold)

This proposed amendment would include as a recital the fact that landlords are not obligated under state or local law to conduct criminal background checks on tenants.

3. Recital on creation of a clerk file containing documents and research (Councilmember González)

This proposed amendment would include a recital referencing a clerk file containing the documents and research supporting the data cited in the previous recitals regarding statistics on persons with criminal histories, studies showing the relationship between stable housing and recidivism, disproportionality in prison populations of communities of color, the impacts of a record of juvenile sex offenses, and recidivism rates of juveniles convicted of sex offenses.

4. Adding an evaluation of the legislation (Councilmember Herbold)

This amendment requires SOCR to ask the City Auditor to conduct an evaluation of Fair Chance Housing to look at the ability of persons with criminal histories to obtain housing and the impacts on the incidence of racial discrimination. It asks for the evaluation to be completed by the end of 2019. The scope of the evaluation will be discussed with the City Auditor and an estimated cost will be determined.

5. Prohibiting use of a sex offense conviction if the adult was convicted as a juvenile (Councilmember Herbold)

The current legislation does not allow a landlord to deny housing or otherwise carry out an adverse action based on juvenile records or information on a sex offender registry about a prospective juvenile occupant, tenant, or member of a household. It does allow a landlord to deny housing or carry out an adverse action using information on a sex offender registry about an adult, regardless of whether the sex offense conviction occurred when the adult was a juvenile or over 18. This amendment would no longer allow a landlord to deny housing or carry out an adverse action based on information about the adult on the sex offender registry if the sex offense conviction occurred when the adult was a juvenile. It still allows the landlord to deny housing or carry out an adverse action based on information on the sex offender registry if the conviction occurred when the adult was over 18.

6. Changing the two-year conviction record look back period to no look back period
(Councilmember O'Brien)

This amendment would remove a landlord's ability to use any of the following information about a prospective tenant as a basis for denying housing or otherwise carrying out an adverse action: an adult's criminal records, arrest records, conviction records, or criminal history. The current draft of the bill already prohibits the use of juvenile records as a basis for carrying out an adverse action. Thus, the only basis upon which a landlord could deny housing or otherwise carry out an adverse action is if the landlord had a legitimate business reason for doing so based on the presence of an adult on a sex offender registry. The definition of "legitimate business reason" is revised to reflect that the convictions a landlord can consider are only those listed on the registry.

The amendment would also change the notice requirements to state that the landlord is prohibited from rejecting an applicant because of any juvenile record, arrest record, conviction record, or criminal history, except for an adult's presence on a sex offender registry, and that applicants could still provide supplemental information related to an individual's rehabilitation, good conduct, and facts or explanations regarding their classification on a sex offender registry.

The prohibition regarding use of the information described and the notice requirements are subject to the exclusions enumerated in section 14.09.110, which recognize (among other things) that a landlord of federally assisted housing is required to deny tenancy based on lifetime sex offender registration and conviction of manufacture or production of methamphetamine on the premises of federally assisted housing.

7. Removing the exclusion for four or fewer units where the owner lives on the premises
(Councilmember O'Brien)

This amendment would no longer exclude buildings with four or fewer units where each family lives independently and the owner lives in one of the units from the requirements of the bill. The other exclusions would remain intact.

Attachments:

- A. CB 119015 Proposed Amendment Language

cc: Kirstan Arestad, Central Staff Director
Dan Eder, Central Staff Deputy Director