1   **CITY OF SEATTLE**

2   **RESOLUTION** _____

3   ..title

4 A RESOLUTION encouraging as a best practice the use of an individualized tenant assessment

5   using the Fair Housing Act's discriminatory effects standard to avoid Fair Housing Act

6   violations when criminal history is used as a screening criterion in the landlord screening

7   process.

8   ..body

9 WHEREAS, the United States Department of Housing and Urban Development (HUD) has

10   issued guidance in determining whether the use of criminal history by a housing provider

11   to deny housing opportunities results in unjustified discriminatory effects, affirming that

12   restrictions based on a characteristic not protected under Title VIII of the Civil Rights Act

13   of 1968 (the Fair Housing Act), 42 U.S.C. 3601, *et seq.*, such as criminal history, could

14   still violate the Act if the burden of the restriction fell more often on members of one

15   protected class over another, and stating that "[housing providers'] selective use of

16   criminal history as a pretext for unequal treatment of individuals based on race, national

17   origin, or other protected characteristics violates the Act"; and

18 WHEREAS, in September 2014 the City Council adopted Resolution 31546, in which the Mayor

19   and Council jointly convened the Seattle Housing Affordability and Livability Agenda

20   (HALA) Advisory Committee, resulting in the July 2015 Final Advisory Committee

21   Recommendations and the Mayor's *Housing Seattle: A Roadmap to an Affordable and*

22   *Livable City*, which outline solutions to address Seattle's housing affordability crisis; and

23 WHEREAS, in October 2015 the City Council adopted Resolution 31622, which declared the

24   City Council's intent to expeditiously consider strategies recommended by the HALA

25   Advisory Committee, including fair access to housing for people with criminal records

26   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[1]; 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[2]; 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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[1] http://www.prisonpolicy.org/graphs/2010percent/WA_Blacks_2010.html
[2] 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 states that in order to show that a criminal history screening

8   policy is necessary to serve a "substantial, legitimate, nondiscriminatory interest," a

9   housing provider "must show that its policy accurately distinguishes between criminal

10   conduct that indicates a demonstrable risk to resident safety and/or property and criminal

11   conduct that does not" and that "A policy or practice that fails to take into account the

12   nature and severity of an individual's conviction is unlikely to satisfy this standard."

13 WHEREAS, the HUD guidance further states that "[a]housing provider must, however, "be

14   able to prove through reliable evidence that its policy or practice of making housing

15   decisions based on criminal history actually assists in protecting resident safety and/or

16   property. Bald assertions based on generalizations or stereotypes that any individual with

17   an arrest or conviction record poses a greater risk than any individual without such a

18   record are not sufficient to satisfy this burden;"; and

19

20 WHEREAS, the City Council supports the principles of the Seattle Fair Chance Employment

21   Ordinance, commonly referred to as "ban the box," as a method to increased the

22   employment opportunities for people with criminal records by, among other things,

1   requiring individualized assessments and prohibiting questions on initial job applications

2   regarding an applicant's criminal record; and

3 WHEREAS, the Seattle Office of Civil Rights, as a part of the July 2015 Final Advisory

4   Committee Recommendations and the Mayor's *Housing Seattle: A Roadmap to an*

5   *Affordable and Livable City,* has convened the Fair Chance Housing committee to

6   provide input on legislation to ensure a fair chance in housing for those facing barriers

7   due to an arrest and conviction record; NOW, THEREFORE,

8 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE**

9 **MAYOR CONCURRING, THAT:**

10   Section 1. The City Council is committed to passing an ordinance, consistent with HALA

11 recommendations (See Attachment A). as soon as practicable that ensures that people with

12 criminal history have fair and equitable access to housing while protecting the rights and

13 interests of property owners.

14   Section 2. The City Council intends to work with those most impacted by the use of

15 criminal history in screening criteria as well as property owners to help guide the content of such

16 an ordinance.

17   Section 3. The City Council recognizes that landlord screening criteria related to criminal

18 history used to determine a tenant's eligibility or suitability to obtain housing can result in

19 disparate impacts on racial minorities. The City Council prioritizes policies leading to racial

20 equity outcomes in housing, which include promotion of the United States Department of

21 Housing and Urban Development (HUD) guidance cautioning against a landlord's policy or

22 practice of categorically excluding individuals from housing based on criminal history.

1   Section 4. The City Council endorses practices that are consistent with HUD's guidance;

2 namely, that landlords should not exclude individuals from housing on the basis of prior arrests

3 not resulting in conviction, because an arrest alone does not constitute proof of the commission

4 of any crime and does not provide a reliable metric to determine potential risk to resident safety

5 and protections of property.

6   Section 5. The City Council urges that consistent with HUD's guidance, landlords should

7 only implement practices excluding persons from housing based on criminal conviction history

8 when those practices are based upon reliable evidence that the policy is necessary to achieves a

9 substantial, legitimate, nondiscriminatory interest (for example, by distinguishing between

10 criminal conduct that indicates a demonstrable risk to resident safety and/or property and

11 criminal conduct that does not), and that such an interest could not be served by another practice

12 that has a less discriminatory effectare specifically tailored to address resident safety and

13 protection of property, which may include, among other things, conducting an individualized

14 tenant assessment and allowing an applicant who has been denied tenancy because of conviction

15 history to provide additional information that a landlord could consider in reevaluating the

16 screening decision, including but not limited to:.

17

18   A.   The nature and severity of the crime;

19   B.   The conduct underlying the conviction;

20   C.   The length of time since conviction and/or release from incarceration;

21   D.   The age of the individual at the time of conviction;

22   E.   What the convicted person has done since the conviction; and

23   F.   Evidence of rehabilitation.

1   Section 6. The City Council endorses *Selecting a Tenant Screening Agency: Guideline*

2 *for Property Management in Affordable Housing,* the tenant screening agency guidance issued

3 by the Seattle Office of Housing in 2015 (Attachment A Bto this resolution) to ensure that

4 landlords are using accurate and consistent criminal record information; unlawful detainer

5 information consistent with Engrossed Senate Bill 6413, passed by the Washington State

6 Legislature in March 2016 (Attachment B C to this resolution); and *Recommended Best*

7 *Practices to Do and Not Do in Drafting and Implementing a Criminal Conviction Screening*

8 *Policy* (Attachment C D to this resolution), adapted from the National Multifamily Housing

9 Council's white paper *Best Practices to Avoid Disparate Impact Liability.*

10   Section 7. The City Council supports the principles of the Seattle's Fair Chance

11 Employment Ordinance, which (a) requires individualized assessments of job applicants similar

12 to HUD's guidance for housing rental applicants and (b) prohibits questions about criminal

13 backgrounds on initial applications for rental of real property. The City Council intends to

14 include these provisions in a future ordinance.

15   Section 7. The City Council recommends that a landlord should not rely on records that

16 cannot be reported by consumer reporting agencies under State law.

17   Section 8. The City Council commends the Seattle Office for Civil Rights's efforts to

18 proactively identify instances of housing discrimination and to enforce fair housing laws through

19 testing, investigation of charges, and other means. The City Council supports a continued effort

20 to prevent and investigate housing discrimination through landlord and applicant education, and

21 intends to pursue innovative enforcement measures.

22   Section 9. The City Council requests that, when investigating any complaint of housing

23 discrimination based on the use of criminal history, the Seattle Office for Civil Rights should

1   seek to determine whether there is disparate impact, an intent to discriminate, or unjustified

2   discriminatory effects 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)
13
14   Attachments:
15   Attachment A: HALA Recommendations
16   Attachment B: Selecting a Tenant Screening Agency: Guideline for Property
17   Management in Affordable Housing
18   Attachment CB: Engrossed Senate Bill 6413
19   Attachment DC: Recommended Best Practices to Do and Not Do in Drafting and
20   Implementing a Criminal Conviction Screening Policy

Seattle Housing Affordability and Livability Agenda

ISSUE: An estimated 25-33% of US adults have a criminal record and face significant, and often lifelong, barriers to housing. They are disproportionately people of color. Housing helps them access job programs and maintain employment, reunite with families, and comply with terms of release. Stable housing also has broad community benefits. It is a key strategy for ending homelessness, helps address racial disparities, and improves public safety by reducing recidivism.

1. Pursue a combination of local legislation, education, technical assistance, and fair housing enforcement to reduce barriers to housing for people with criminal records.

    1a. Develop legislation to reduce barriers for people with criminal records.

    1a(i) Prohibit advertisements for rental housing that make people with criminal records ineligible to apply.

    1a(ii) Prohibit screen criteria that include an absolute exclusion of anyone with a criminal record or a broad category of criminal record, such as a felony.

    1a(iii) Require consideration, prior to denial, of additional, verifiable information provided by the applicant regarding the criminal record and/or changed circumstances or good conduct since the time of conviction.

    1a(iv) Prohibit denials based on records that cannot be reported under state law, such as crimes greater than seven (7) years since disposition or release, or juvenile records if the applicant is twenty-one (21) years old or older.

    1a(v) Prohibit denials based on arrests older than one (1) year, except when currently pending charges are under active prosecution.

    1a(vi) Prohibit denials based on warrants attached to a case where a final disposition has been entered. Allow exclusion of people with active warrants, either pending or unadjudicated.

    1a(vii) Require screening criteria to be based on a business justification related to the requirements of tenancy.

    1a(viii) Provide for the enforcement of the above provisions.

Source: Housing Affordability and Livability Agenda, *Final Advisory Committee Recommendations To Mayor Edward B. Murray and the Seattle City Council*, pg. Appendix F-11 (July 13, 2015)