

Attachment A: CB 119015 Proposed Amendment Language

Proposed Amendment 1: Technical and clarifying amendments recommended by SOCR
(Councilmember Herbold)

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~~WHEREAS~~WHEREAS, research shows higher recidivism occurs within the first two years of release and is mitigated when individuals have access to safe and affordable housing and employment;¹¹ and

WHEREAS, a 2015 study reported that juveniles on the sex offender registry had considerable difficulty in accessing stable housing because of their status, which contributed to negative mental health outcomes;¹² and

WHEREAS, more than 90 percent of arrests of juveniles for sex offenses represent a one-time event that does not recur,¹³ and studies have repeatedly shown low recidivism rates ranging from three percent to four percent;¹⁴ and

WHEREAS, The City of Seattle has developed a Race and Social Justice Initiative (RSJI) to eliminate institutional racism and create a community where equity in opportunity exists for everyone; and

WHEREAS, the City's Office for Civil Rights (OCR) works to advance civil rights and end barriers to equity; and

WHEREAS, in 2010, residents of Sojourner Place Transitional Housing, Village of Hope, and other community groups called on the City to address barriers to housing faced by people with prior records; and

WHEREAS, in response, OCR and the Seattle Human Rights Commission held two public forums in 2010 and 2011, bringing together over 300 people including community members with arrest and conviction records, landlords, and employers to share their concerns; and

WHEREAS, in 2013, the City Council passed the Seattle Jobs Assistance Ordinance, now titled the Fair Chance Employment Ordinance, to address barriers in employment; and

WHEREAS, since 2013, the Office of Housing has worked with nonprofit housing providers to share best practices in tenant screening to address racial inequities; and

WHEREAS, in September 2014 the Council adopted Resolution 31546, in which the Mayor and Council jointly convened the Seattle Housing Affordability and Livability Agenda (HALA) Advisory Committee to evaluate potential strategies to make Seattle more affordable, equitable, and inclusive; and in particular, to promote the development and preservation of affordable housing for residents of the City; and

WHEREAS, in July 2015, HALA published its Final Advisory Committee Recommendations and the Mayor published *Housing Seattle: A Roadmap to an Affordable and Livable City*, which outlines a multi-pronged approach of bold and innovative solutions to address Seattle’s housing affordability crisis; and

~~WHEREAS~~WHEREAS, in October 2015, the Mayor proposed and Council adopted Resolution 31622, declaring the City’s intent to expeditiously consider strategies recommended by the Housing Affordability Livability Agenda (HALA) Advisory Committee; and

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14.09.010 Definitions

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“Criminal history” means records or other information received from a criminal background check or contained in records collected by criminal justice agencies, including courts, consisting of identifiable descriptions and notations of arrests, arrest records, detentions, indictments, informations, or other formal criminal charges, any disposition arising therefrom, including conviction records, waiving trial rights, deferred sentences, stipulated order of

Attachment A: CB 119015 Proposed Amendment Language

continuance, dispositional continuance, or any other initial resolution which may or may not later result in dismissal or reduction of charges depending on subsequent events. The term includes acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release, any issued certificates of restoration of opportunities and any information contained in records maintained by or obtained from criminal justice agencies, including courts, which provide individual's record of involvement in the criminal justice system as an alleged or convicted individual. The term does not include registry information, status obtained from a county, statewide, or national sex offender registry.

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“Director” means the Director of the Seattle Office for Civil Rights or the Director’s designee.

“Dwelling unit” has the meaning as defined in Section 22.204.050.D.

“Fair chance housing” means practices to reduce barriers to housing for persons with criminal records.

“Juvenile” means a person under 18 years old.

A “legitimate business reason” shall exist when the policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. To determine such an interest, a landlord must demonstrate, through reliable evidence, a nexus between the policy or practice and resident safety and/or protecting property, in light of the following factors:

- A. The nature and severity of the conviction;
- B. The number and types of convictions; except that pursuant to 14.09.025.A.5, convictions are limited to those found in registry information;
- C. The time that has elapsed since the date of conviction;
- D. Age of the individual at the time of conviction;

Attachment A: CB 119015 Proposed Amendment Language

E. Evidence of good tenant history before and/or after the conviction occurred; and

F. Any supplemental information related to the individual’s rehabilitation, good conduct, and facts or circumstances surrounding the conviction provided by the individual, if the individual chooses to do so.

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“Registry information” means information solely obtained from a county, statewide, or national sex offender registry, including but not limited to, the registrant’s physical description, address, and conviction description and dates.

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14.09.025 Prohibited use of criminal history

A. It is an unfair practice for any person to:

1. Advertise, publicize, or implement any policy or practice that automatically or categorically excludes all individuals with any arrest record, conviction record, or criminal history from any rental housing that is located within the City.

2. Require disclosure, inquire about, or carry out an adverse action ~~in~~ **housing**, based on an arrest record of a prospective occupant, a tenant, or a member of their household. An arrest record is not proof that a person has engaged in unlawful conduct.

3. Require disclosure, inquire about, or take an adverse action ~~in housing~~ against a prospective occupant, a tenant or a member of their household, based on (a) criminal history, except for conviction records pursuant to subsection 14.09.025.A.4 and 14.09.025.A.5; (b) juvenile records; (c) convictions that have been expunged, sealed, or vacated; and/or (d) conviction records that, from the date of disposition, precede the date of the rental application by more than two years.

4. Carry out an adverse action based on a conviction record with a disposition date within two years from the date of the rental application of a prospective occupant, a tenant or a member of their household, unless the landlord has a legitimate business reason for taking such action.

5. Carry out an adverse action based on ~~status registry information obtained from a county, state, or national sex offender registry~~, of a prospective adult occupant, an adult tenant, or an adult member of their household, unless the landlord has a legitimate business reason for taking such action.

6. Carry out an adverse action based on registry information ~~obtained from any county, statewide, or national sex offender registry~~ regarding any ~~juvenile~~ prospective juvenile occupant, a juvenile tenant, or juvenile member of their household.

14.09.030 Retaliation prohibited

A. No person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter 14.09.

B. No person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this Chapter 14.09. Such rights include but are not limited to the right to fair chance housing and regulation of the use of criminal history in housing by this Chapter 14.09; the right to make inquiries about the rights protected under this Chapter 14.09; the right to inform others about their rights under this Chapter 14.09; the right to inform the person's legal counsel or any other person about an alleged violation of this Chapter 14.09; the right to file an oral or written complaint with the Department for an alleged violation of this Chapter 14.09; the right to cooperate with the Department in its investigations of this Chapter 14.09; the right to testify in a proceeding under or related to this Chapter 14.09; the right

to refuse to participate in an activity that would result in a violation of City, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.09.

C. No person shall communicate to a person exercising rights protected in this Section 14.09.030, directly or indirectly, the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of a prospective occupant, a tenant or a member of their household to a federal, state, or local agency because the prospective occupant or tenant has exercised a right under this Chapter 14.09.

ED. It shall be a rebuttable presumption of retaliation if a landlord or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 14.09.030. The landlord may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

DE. Proof of retaliation under this Section 14.09.030 shall be sufficient upon a showing that a landlord or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 14.09.030 was a motivating factor in the adverse action, unless the landlord can prove that the action would have been taken in the absence of such protected activity.

EF. The protections afforded under this Section 14.09.030 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 14.09.

FG. A complaint or other communication by any person triggers the protections of this Section 14.09.030 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 14.09.

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14.09.110 Exclusions and other legal requirements

A. This Chapter 14.09 shall not be interpreted or applied to diminish or conflict with any requirements of state or federal law, including but not limited to Title VIII of the Civil Rights Act of 1968, the Federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., as amended; the Washington State Fair Credit Reporting Act, chapter 19.182 RCW, as amended; and the Washington State Criminal Records Privacy Act, chapter 10.97 RCW, as amended. In the event of any conflict, state and federal requirements shall supersede the requirements of this Chapter 14.09.

B. This Chapter 14.09 shall not apply to an adverse action taken by landlords of federally assisted housing subject to federal regulations that require ~~an adverse action denial of tenancy~~, including but not limited to when any member of the household is subject to a lifetime sex offender registration requirement under a state sex offender registration program and/or convicted of manufacture or production of methamphetamine on the premises of federally assisted housing.

C. This Chapter 14.09 shall not apply to the renting, subrenting, leasing, or subleasing of ~~a dwelling unit in which the owner or subleasing tenant or subrenting tenant, occupy part of the dwelling unit and in which the owner or subleasing tenant or subrenting tenant, shares a kitchen or bathroom with a prospective occupant, single family dwelling; or a residence housing one family or household or one that is designed for one family only or a unit so designed; wherein the owner or person entitled to possession thereof maintains a permanent residence, home, or abode.~~

D. This Chapter 14.09 shall not apply to ~~the renting, subrenting, leasing, or subleasing of rooms or units in~~ dwelling units ~~containing living quarters~~ occupied or intended to

Attachment A: CB 119015 Proposed Amendment Language

be occupied by no more than four ~~families~~ households living independently of each other, if the owner actually maintains and occupies one ~~of such living quarters-unit~~ as ~~their~~ the owners' permanent residence.

E. This Chapter 14.09 shall not apply to the renting, subrenting, leasing, or subleasing of an accessory dwelling unit or detached accessory dwelling unit wherein the owner or person entitled to possession thereof maintains a permanent residence, home, or abode on the same lot.

F. This Chapter 14.09 shall not be construed to discourage or prohibit landlords from adopting screening policies that are more generous to prospective occupants and tenants than the requirements of this Chapter 14.09.

G. This Chapter 14.09 shall not be construed to create a private civil right of action.

Proposed Amendment 2 Updated: Recital on screening requirements (Councilmember Herbold)

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WHEREAS, in 2016, the Department of Housing and Urban Development (HUD) issued guidance on the application of the Fair Housing Act to the use of arrest and conviction records in rental housing, stating that a housing provider may be in violation of fair housing laws if their policy or practice does not serve a substantial, legitimate, nondiscriminatory interest, due to the potential for criminal record screening to have a disparate impact on African American and other communities of color; and

WHEREAS, except for landlords operating federally assisted housing programs, conducting a criminal background check to screen tenants is a discretionary choice for landlords that they have no legal duty-are not obligated under local City or state law to fulfill-conduct criminal background checks; and

WHEREAS, in 2016, the Seattle City Council passed Resolution 31669, affirming HUD's guidance and the work of the Mayor's Fair Chance Housing Committee; NOW, THEREFORE,

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Attachment A: CB 119015 Proposed Amendment Language

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

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WHEREAS, more than 90 percent of arrests of juveniles for sex offenses represent a one-time event that does not recur,¹³ and studies have repeatedly shown low recidivism rates ranging from three percent to four percent;¹⁴ and

WHEREAS, documents and research relating to the information cited in the recitals is located in Clerk File 320351; and

WHEREAS, The City of Seattle has developed a Race and Social Justice Initiative (RSJI) to eliminate institutional racism and create a community where equity in opportunity exists for everyone; and

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Proposed Amendment 4: Adding an evaluation of the legislation (Councilmember Herbold)

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14.09.110 Evaluation

The Department shall ask the Office of the City Auditor to conduct an evaluation of the Fair Chance Housing Ordinance to determine if the program should be maintained, amended, or repealed. The evaluation should include an analysis of the impact on discrimination based on race and the impact on the ability of persons with criminal records to obtain housing. The highest quality evaluation will be performed based on available resources and data. The Office of the City Auditor, at its discretion, may retain an independent, outside party to conduct the evaluation. The evaluation shall be submitted to City Council by the end of 2019.

14.09.~~110~~115 Exclusions and other legal requirements

A. This Chapter 14.09 shall not be interpreted or applied to diminish or conflict with any requirements of state or federal law, including but not limited to Title VIII of the Civil Rights Act of 1968, the Federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., as amended; the Washington State Fair Credit Reporting Act, chapter 19.182 RCW, as amended; and the Washington State Criminal Records Privacy Act, chapter 10.97 RCW, as amended. In the event of any conflict, state and federal requirements shall supersede the requirements of this Chapter 14.09.

B. This Chapter 14.09 shall not apply to an adverse action taken by landlords of federally assisted housing subject to federal regulations that require an adverse action, including but not limited to when any member of the household is subject to a lifetime sex offender registration requirement under a state sex offender registration program and/or convicted of manufacture or production of methamphetamine on the premises of federally assisted housing.

Attachment A: CB 119015 Proposed Amendment Language

C. This Chapter 14.09 shall not apply to the renting, subrenting, leasing, or subleasing of a single-family dwelling; or a residence housing one family or household or one that is designed for one family only or a unit so designed; wherein the owner or person entitled to possession thereof maintains a permanent residence, home, or abode.

D. This Chapter 14.09 shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as their residence.

E. This Chapter 14.09 shall not apply to an accessory dwelling unit or detached accessory dwelling unit wherein the owner or person entitled to possession thereof maintains a permanent residence, home, or abode on the same lot.

F. This Chapter 14.09 shall not be construed to discourage or prohibit landlords from adopting screening policies that are more generous to prospective occupants and tenants than the requirements of this Chapter 14.09.

G. This Chapter 14.09 shall not be construed to create a private civil right of action.

14.09.115120 Severability

The provisions of this Chapter 14.09 are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.09, or the application thereof to any landlord, prospective occupant, tenant, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this Chapter 14.09, or the validity of its application to other persons or circumstances.

Attachment A: CB 119015 Proposed Amendment Language

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

14.09.025 Prohibited use of criminal history

A. It is an unfair practice for any person to:

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7. Carry out an adverse action based on registry information regarding a prospective adult occupant, an adult tenant, or an adult member of their household if the conviction occurred when the individual was a juvenile.

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

14.09.010 Definitions

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“Criminal history” means records or other information received from a criminal background check or contained in records collected by criminal justice agencies, including courts, consisting of identifiable descriptions and notations of arrests, arrest records, detentions, indictments, informations, or other formal criminal charges, any disposition arising therefrom, including conviction records, waiving trial rights, deferred sentences, stipulated order of continuance, dispositional continuance, or any other initial resolution which may or may not later result in dismissal or reduction of charges depending on subsequent events. The term includes acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release, any issued certificates of restoration of opportunities and any information contained in records maintained by or obtained from criminal justice agencies, including courts, which provide individual’s record of involvement in the criminal justice system as an alleged or convicted individual. The term does not include status obtained from a county, statewide, or national sex offender registry.

~~“Date of disposition” means the date of conviction, judgment, and sentence, and/or date on which any criminal charge is initially resolved or adjudicated, whichever is latest, specifically including the imposition of a deferred sentence, stipulated order of continuance, dispositional continuance, or any other initial resolution which may or may not later result in dismissal or reduction of charges depending on subsequent events. “Date of disposition” does not refer to ultimate resolution of the findings in the case or to any adjustment to findings that may occur as~~

~~a result of appeal, post-conviction litigation, post-disposition motions, or agreement to continue for dismissal or reduction of charges.~~

~~“Date of rental application” means the date and time when a landlord receives a complete rental application, whether submitted through the mail, electronically, or in person.~~

“Department” means the Seattle Office for Civil Rights and any division therein.

“Detached accessory dwelling unit” has the meaning defined in Section 23.84A.032’s definition of “Residential use.”

“Director” means the Director of the Seattle Office for Civil Rights or the Director’s designee.

“Fair chance housing” means practices to reduce barriers to housing for persons with criminal records.

“Juvenile” means a person under 18 years old.

A “legitimate business reason” shall exist when the policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. To determine such an interest, a landlord must demonstrate, through reliable evidence, a nexus between the policy or practice and resident safety and/or protecting property, in light of the following factors:

- A. The nature and severity of the conviction;
- B. The number and types of convictions;
- C. The time that has elapsed since the date of conviction;
- D. Age of the individual at the time of conviction;
- E. Evidence of good tenant history before and/or after the conviction occurred; and

F. Any supplemental information related to the individual's rehabilitation, good conduct, and additional facts or explanations ~~circumstances surrounding the conviction~~ provided by the individual, if the individual chooses to do so.

For the purposes of this definition, review of conviction information is limited to those convictions included in registry information.

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14.09.020 Notice to prospective occupants and tenants

The written notice shall ~~also~~ include that the landlord is prohibited from requiring disclosure, asking about, rejecting an applicant, or taking an adverse action based on any arrest record, conviction record, or criminal history, subject to the exclusions and legal requirements in section 14.09.110. ~~will consider for tenancy qualified applicants with criminal histories and applicants may provide any supplemental information related to an individual's rehabilitation, good conduct, and facts or circumstances surrounding any conviction record within two years from the date of the rental application.~~ If a landlord screens prospective occupants pursuant to section 14.09.025.A.3 ~~for conviction records~~, the landlord shall provide written notice of screening criteria on all applications for rental properties. Pursuant to section 14.09.025.A.3, applicants may provide any supplemental information related to an individual's rehabilitation, good conduct, and facts or explanations regarding their registry information. The Department shall adopt a rule or rules to enforce this Section 14.09.020.

14.09.025 Prohibited use of criminal history

A. It is an unfair practice for any person to:

1. Advertise, publicize, or implement any policy or practice that automatically or categorically excludes all individuals with any arrest record, conviction record, or criminal history from any rental housing that is located within the City.

~~2. Require disclosure, inquire about, or carry out an adverse action in housing, based on an arrest record of a prospective occupant, a tenant, or a member of their household. An arrest record is not proof that a person has engaged in unlawful conduct.~~

32. Require disclosure, inquire about, or take an adverse action in housing against a prospective occupant, a tenant or a member of their household, based on any arrest record, conviction record, juvenile record, or(a) criminal history, except for ~~conviction records information~~ pursuant to subsection 14.09.025.A.3 and subject to the exclusions and legal requirements in section 14.09.110.4; ~~(b) juvenile records; (c) convictions that have been expunged, sealed, or vacated; and/or (d) conviction records that, from the date of disposition, precede the date of the rental application by more than two years;~~

~~4. Carry out an adverse action based on a conviction record with a disposition date within two years from the date of the rental application of a prospective occupant, a tenant or a member of their household, unless the landlord has a legitimate business reason for taking such action.~~

53. Carry out an adverse action based on status obtained from a county, state, or national sex offender registry, of a prospective adult occupant, an adult tenant, or an adult member of their household, unless the landlord has a legitimate business reason for taking such action.

Attachment A: CB 119015 Proposed Amendment Language

64. Carry out an adverse action based on information obtained from any county, statewide, or national sex offender registry regarding any juvenile prospective occupant, a juvenile tenant, or juvenile member of their household.

B. If a landlord takes an adverse action based on a legitimate business reason, the landlord shall provide written notice by email, mail, or in person of the adverse action to the prospective occupant or the tenant and state the specific ~~record or records~~ registry information that ~~were was~~ the basis for the adverse action.

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

14.09.110 Exclusions and other legal requirements

A. This Chapter 14.09 shall not be interpreted or applied to diminish or conflict with any requirements of state or federal law, including but not limited to Title VIII of the Civil Rights Act of 1968, the Federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., as amended; the Washington State Fair Credit Reporting Act, chapter 19.182 RCW, as amended; and the Washington State Criminal Records Privacy Act, chapter 10.97 RCW, as amended. In the event of any conflict, state and federal requirements shall supersede the requirements of this Chapter 14.09.

B. This Chapter 14.09 shall not apply to an adverse action taken by landlords of federally assisted housing subject to federal regulations that require an adverse action, including but not limited to when any member of the household is subject to a lifetime sex offender registration requirement under a state sex offender registration program and/or convicted of manufacture or production of methamphetamine on the premises of federally assisted housing.

C. This Chapter 14.09 shall not apply to the renting, subrenting, leasing, or subleasing of a single-family dwelling; or a residence housing one family or household or one that is designed for one family only or a unit so designed; wherein the owner or person entitled to possession thereof maintains a permanent residence, home, or abode.

~~D. This Chapter 14.09 shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as their residence.~~

Attachment A: CB 119015 Proposed Amendment Language

~~ED~~. This Chapter 14.09 shall not apply to an accessory dwelling unit or detached accessory dwelling unit wherein the owner or person entitled to possession thereof maintains a permanent residence, home, or abode on the same lot.

~~FE~~. This Chapter 14.09 shall not be construed to discourage or prohibit landlords from adopting screening policies that are more generous to prospective occupants and tenants than the requirements of this Chapter 14.09.

~~GE~~. This Chapter 14.09 shall not be construed to create a private civil right of action.