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**Title:** A RESOLUTION encouraging as a best practice 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 criterion in the landlord screening process.

**Sponsors:** Lisa Herbold

**Indexes:**

**Attachments:** 1. Att A - HALA Recommendations, 2. Att B - Selecting a Tenant Screening Agency V1, 3. Att C - Engrossed Senate Bill 6413 V1, 4. Att D - Recommended Best Practices To Do and Not Do in Drafting and Implementing a Criminal Conviction Screening Policy V1, 5. Proposed Substitute, 6. Baghaw Amendment (Added; 6-13-16), 7. Summary and Fiscal Note, 8. Att A - Selecting a Tenant Screening Agency: Guideline for Property Management in Affordable Housing V1, 9. Att B - Engrossed Senate Bill 6413 V1, 10. Att C - Recommended Best Practices To Do and Not Do in Drafting and Impementing a Criminal Conviction Screening Policy, 11. Signed Resn 31669

| Date      | Ver. | Action By   | Action                          | Result |
|-----------|------|---|---------------------------------|--------|
| 6/17/2016 | 3    | City Clerk  | attested by City Clerk          |        |
| 6/17/2016 | 3    | Mayor   | returned                        |        |
| 6/17/2016 | 3    | Mayor   | Signed                          |        |
| 6/14/2016 | 3    | City Clerk  | submitted for Mayor's signature |        |
| 6/13/2016 | 2    | City Council  | adopted as amended              | Pass   |
| 6/3/2016  | 1    | Civil Rights, Utilities, Economic Development, and Arts Committee | adopt as amended                | Pass   |
| 5/31/2016 | 1    | City Council  | referred                        |        |
| 5/26/2016 | 1    | Council President's Office  | sent for review                 |        |
| 5/25/2016 | 1    | City Clerk  | sent for review                 |        |

CITY OF SEATTLE

RESOLUTION \_\_\_\_\_

A RESOLUTION encouraging as a best practice 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 criterion in the landlord screening process.

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’] 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

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

WHEREAS, African Americans are four percent of Washington’s population but account for 18 percent of the state’s prison and jail population; and Native Americans are two percent of the state population but account for five percent of the state’s prison and jail population; and

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

testers; and

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

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

WHEREAS, the HUD guidance states that in order to show that a criminal history screening policy is necessary to serve a “substantial, legitimate, nondiscriminatory interest,” a housing provider “must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not” and that “A policy or practice that fails to take into account the nature and severity of an individual’s conviction is unlikely to satisfy this standard.”

WHEREAS, the HUD guidance further states that a housing provider must “be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property. Bald assertions based on generalizations or stereotypes that any individual with an arrest or conviction record poses a greater risk than any

individual without such a record are not sufficient to satisfy this burden;” and

WHEREAS, the City Council supports the principles of the Seattle Fair Chance Employment Ordinance, commonly referred to as “ban the box,” as a method to increase the employment opportunities for people with criminal records by, among other things, requiring individualized assessments and prohibiting questions on initial job applications regarding an applicant’s criminal record; and

WHEREAS, The Washington State Legislature passed House Bill 1553 in March 2016, an Act relating to certificates of restoration of opportunity, that states “certificates of restoration of opportunity offer potential public and private employers or housing providers concrete and objective information about an individual under consideration for an opportunity. These certificates can facilitate the successful societal reintegration of individuals with a criminal history whose behavior demonstrates that they are taking responsibility for their past criminal conduct pursuing a positive law-abiding future.”

WHEREAS, the Seattle Office of Civil Rights, as a part of the July 2015 Final Advisory Committee Recommendations and the Mayor’s *Housing Seattle: A Roadmap to an Affordable and Livable City*, has convened the Fair Chance Housing committee to provide input on legislation to ensure a fair chance in housing for those facing barriers due to an arrest and conviction record; NOW, THEREFORE,

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

Section 1. The City Council is committed to passing an ordinance, consistent with HALA recommendations (See Attachment A), as soon as practicable that ensures that people with criminal history have fair and equitable access to housing while protecting the rights and interests of property owners.

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

Section 3. The City Council recognizes that landlord screening criteria related to criminal history used to determine a tenant’s eligibility or suitability to obtain housing can result in disparate impacts on racial

minorities. The City Council prioritizes policies leading to racial equity outcomes in housing, which include promotion of the United States Department of Housing and Urban Development (HUD) guidance cautioning against a landlord's policy or practice of categorically excluding individuals from housing based on criminal history.

Section 4. The City Council endorses practices that are consistent with HUD's guidance; namely, that landlords should not exclude individuals from housing on the basis of prior arrests not resulting in conviction, because an arrest alone does not constitute proof of the commission of any crime and does not provide a reliable metric to determine potential risk to resident safety and protections of property.

Section 5. The City Council urges that consistent with HUD's guidance, landlords should only implement practices excluding persons from housing based on criminal conviction history when those practices are based upon reliable evidence that the policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest (for example, by distinguishing between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not), and that such an interest could not be served by another practice that has a less discriminatory effect, which may include, among other things, conducting an individualized tenant assessment and allowing an applicant who has been denied tenancy because of conviction history to provide additional information that a landlord could consider in reevaluating the screening decision, including but not limited to:

- A. The nature and severity of the crime;
- B. The conduct underlying the conviction;
- C. The length of time since conviction and/or release from incarceration;
- D. The age of the individual at the time of conviction;
- E. What the convicted person has done since the conviction; and
- F. Evidence of rehabilitation.

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

*Management in Affordable Housing*, the tenant screening agency guidance issued by the Seattle Office of Housing in 2015 (Attachment B) to ensure that landlords are using accurate and consistent criminal record information; unlawful detainer information consistent with Engrossed Senate Bill 6413, passed by the Washington State Legislature in March 2016 (Attachment C ); and *Recommended Best Practices to Do and Not Do in Drafting and Implementing a Criminal Conviction Screening Policy* (Attachment D ), adapted from the National Multifamily Housing Council’s white paper *Best Practices to Avoid Disparate Impact Liability*.

Section 7. The City Council recommends that a landlord should not rely on records that cannot be reported by consumer reporting agencies under State law.

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

Section 9. The City Council requests that, when investigating any complaint of housing discrimination based on the use of criminal history, the Seattle Office for Civil Rights should seek to determine whether there is disparate impact, an intent to discriminate, or unjustified discriminatory effects from the use of criminal history.

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

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

The Mayor concurred the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Edward B. Murray, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Monica Martinez Simmons, City Clerk

(Seal)

**Attachments:**

Attachment A: HALA Recommendations

Attachment B: Selecting a Tenant Screening Agency: Guideline for Property Management in Affordable Housing

Attachment C: Engrossed Senate Bill 6413

Attachment D: Recommended Best Practices to Do and Not Do in Drafting and Implementing a Criminal Conviction Screening Policy