



Legislation Text

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**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

AN ORDINANCE relating to housing regulations; adding a new Chapter 14.09 (Fair Chance Housing) to the Seattle Municipal Code to regulate the use of criminal history in rental housing; authorizing the Seattle Office for Civil Rights to enforce the regulations set out in this new chapter; and amending Section 3.14.931 of the Seattle Municipal Code to expand the Seattle Human Rights Commission's duties.

WHEREAS, the U.S. Department of Justice has estimated one in every three adults in the United States has either an arrest or conviction record; and

WHEREAS, the Center for American Progress reports that nearly half of all children in the U.S. have one parent with a criminal record; and

WHEREAS, over the past two decades, there has been a rise in the use of criminal background checks to screen prospective tenants for housing; and

WHEREAS, a study by the Vera Institute of Justice has shown that people with stable housing are more likely to successfully reintegrate into society and are less likely to reoffend; and

WHEREAS, individuals and parents who have served their time must be able to secure housing if they are to re-enter into society to successfully rebuild their lives and care for their families; and

WHEREAS, African Americans are 3.4 percent of Washington's population but account for nearly 18.4 percent of Washington's prison population; Latinos are 11.2 percent of Washington's population but account for 13.2 percent of Washington's prison population; and Native Americans are 1.3 percent of the state population but account for 4.7 percent of Washington's prison population; and

WHEREAS, racial inequities in the criminal justice system are compounded by racial bias in the rental

applicant selection process, as demonstrated by fair housing testing conducted by the Seattle Office for Civil Rights in 2013 that found evidence of different treatment based on race in 64 percent of tests, including some cases where African American applicants were told more often than their white counterparts that they would have to undergo a criminal background check as part of the screening process; and

WHEREAS, there is no sociological research establishing a relationship between a criminal record and an unsuccessful tenancy; and

WHEREAS, an Urban Institute study stated, “men who found [stable] housing within the first month after release were less likely to return to prison during the first year out”; and

WHEREAS, a study performed in Cleveland found that “obtaining stable housing within the first month after release inhibited re-incarceration”; and

WHEREAS, studies show that, after four to seven years where no re-offense has occurred, a person with a prior conviction is no more likely to commit a crime than someone who has never had a conviction; and

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; and

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

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

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, 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

WHEREAS, the Mayor's Housing and Affordability and Livability Agenda recommended that the City address

barriers to housing faced by people with criminal records, and the Mayor responded by creating a Fair Chance Housing Committee; and

WHEREAS, the Fair Chance Housing Committee provided input to OCR on a legislative proposal to address these barriers; and

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 under City or state law to fulfill; 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,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The Council expresses the following concerning implementation of Seattle Municipal Code Chapter 14.09:

A. The implementation of Seattle Municipal Code Chapter 14.09 will consist of:

1. Seattle Office for Civil Rights will conduct regular fair housing testing to ensure compliance, decrease racial bias, and evaluate the impacts of Chapter 14.09; and
2. Seattle Office for Civil Rights will launch a Fair Housing Home Program for landlords.

The program's goal will be to reduce racial bias and biases against other protected classes in tenant selection.

Completion of the training program will result in a certification of a Fair Housing Home program. For pre-finding settlement and conciliation agreements under Chapter 14.09, landlords will be required to participate in

the Fair Housing Home program; and

3. The City of Seattle will work at the state level to reduce the impact of criminal convictions; and

4. The City of Seattle will explore additional mechanisms to reduce the greatest barriers to housing for individuals with criminal conviction records through the Re-Entry Taskforce, convened by the Seattle Office for Civil Rights.

Section 2. A new Chapter 14.09 is added to the Seattle Municipal Code as follows:

## **Chapter 14.09 USE OF CRIMINAL RECORDS IN HOUSING**

### **14.09.005 Short title**

This Chapter 14.09 shall constitute the “Fair Chance Housing Ordinance” and may be cited as such.

### **14.09.010 Definitions**

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

“Adverse action” means:

- A. Refusing to engage in or negotiate a rental real estate transaction;
- B. Denying tenancy;
- C. Representing that such real property is not available for inspection, rental, or lease when in fact it is so available;
- D. Failing or refusing to add a household member to an existing lease;
- E. Expelling or evicting an occupant from real property or otherwise making unavailable or denying a dwelling;
- F. Applying different terms, conditions, or privileges to a rental real estate transaction, including but not limited to the setting of rates for rental or lease, establishment of damage deposits, or other financial conditions for rental or lease, or in the furnishing of facilities or services in connection with such transaction;

- G. Refusing or intentionally failing to list real property for rent or lease;
- H. Refusing or intentionally failing to show real property listed for rent or lease;
- I. Refusing or intentionally failing to accept and/or transmit any reasonable offer to lease, or rent real property;
- J. Terminating a lease; or
- K. Threatening, penalizing, retaliating, or otherwise discriminating against any person for any reason prohibited by Section 14.09.025.

“Aggrieved party” means a prospective occupant, tenant, or other person who suffers tangible or intangible harm due to a person’s violation of this Chapter 14.09.

“Arrest record” means information indicating that a person has been apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement department or military authority due to an accusation or suspicion that the person committed a crime. Arrest records include pending criminal charges, where the accusation has not yet resulted in a final judgment, acquittal, conviction, plea, dismissal, or withdrawal.

“Charging party” means any person who files a charge alleging a violation under this Chapter 14.09, including the Director.

“City” means The City of Seattle.

“Commission” means the Seattle Human Rights Commission.

“Consumer report” has the meaning defined in RCW 19.182.010 and means a written, oral, or other communication of information by a consumer reporting agency bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for purposes authorized under RCW 19.182.020.

“Conviction record” means information regarding a final adjudication or other criminal disposition adverse to the subject. It includes but is not limited to dispositions for which the defendant received a deferred

or suspended sentence, unless the adverse disposition has been vacated or expunged.

“Criminal background check” means requesting or attempting to obtain, directly or through an agent, an individual’s conviction record or criminal history record information from the Washington State Patrol or any other source that compiles, maintains, or reflects such records or information.

“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 registry information.

“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.

“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;
- 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 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.

“Person” means one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers. It includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons, and any political or civil subdivision or agency or instrumentality of the City.

“Prospective occupant” means any person who seeks to lease, sublease, or rent real property.

“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.

“Respondent” means any person who is alleged or found to have committed a violation of this Chapter 14.09.

“Single family dwelling” has the meaning as defined in Section 22.204.200.A.

“Supplemental information” means any information produced by the prospective occupant or the tenant, or produced on their behalf, with respect to their rehabilitation or good conduct, including but not limited to:



- A. Written or oral statement from the prospective occupant or the tenant;
- B. Written or oral statement from a current or previous employer;
- C. Written or oral statement from a current or previous landlord;
- D. Written or oral statement from a member of the judiciary or law enforcement, parole or probation officer, or person who provides similar services;
- E. Written or oral statement from a member of the clergy, counselor, therapist, social worker, community or volunteer organization, or person or institution who provides similar services;
- F. Certificate of rehabilitation;
- G. Certificate of completion or enrollment in an educational or vocational training program, including apprenticeship programs; or
- H. Certificate of completion or enrollment in a drug or alcohol treatment program; or certificate of completion or enrollment in a rehabilitation program.

“Tenant” means a person occupying or holding possession of a building or premises pursuant to a rental agreement.

#### **14.09.015 Applicability**

A person is covered by this Chapter 14.09 when the physical location of the housing is within the geographic boundaries of the City.

#### **14.09.020 Notice to prospective occupants and tenants**

The written notice shall 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, except for information pursuant to subsection 14.09.025.A.3 and subject to the exclusions and legal requirements in section 14.09.110. If a landlord screens prospective occupants pursuant to section 14.09.025.A.3, 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 take an adverse action against a prospective occupant, a tenant or a member of their household, based on any arrest record, conviction record, or criminal history, except for information pursuant to subsection 14.09.025.A.3 and subject to the exclusions and legal requirements in section 14.09.110.

3. Carry out an adverse action based on registry information 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.

4. Carry out an adverse action based on registry information regarding any prospective juvenile occupant, a juvenile tenant, or juvenile member of their household.

5. 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.

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 registry information that was the basis for the adverse action.

C. If a consumer report is used by a landlord as part of the screening process, the landlord must provide the name and address of the consumer reporting agency and the prospective occupant's or tenant's

rights to obtain a free copy of the consumer report in the event of a denial or other adverse action, and to dispute the accuracy of information appearing in the consumer report.

#### **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.

D. 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.

E. 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.

F. 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.

G. 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.

#### **14.09.035 Enforcement power and duties**

A. The Department shall have the power to investigate violations of this Chapter 14.09, as defined herein, and shall have such powers and duties in the performance of these functions as are defined in this Chapter 14.09 and otherwise necessary and proper in the performance of the same and provided for by law.

B. The Department shall be authorized to coordinate implementation and enforcement of this Chapter 14.09 and shall promulgate appropriate guidelines or rules for such purposes.

C. The Director is authorized and directed to promulgate appropriate guidelines and rules consistent with this Chapter 14.09 and the Administrative Code. Any guidelines or rules promulgated by the Director shall have the force and effect of law and may be relied on by landlords, prospective occupants, tenants, and other parties to determine their rights and responsibilities under this Chapter 14.09.

D. The Director shall maintain data on the number of complaints filed pursuant to this Chapter 14.09, demographic information on the complainants, the number of investigations it conducts and the disposition of every complaint and investigation. The Director shall submit this data to the Mayor and City Council every six months for the two years following the effective date of the ordinance introduced as Council

Bill 119015.

#### **14.09.040 Violation**

The failure of any person to comply with any requirement imposed on the person under this Chapter 14.09 is a violation.

#### **14.09.045 Charge-Filing**

A. An aggrieved person may file a charge with the Director alleging a violation. The charge shall be in writing and signed under oath or affirmation before the Director, one of the Department's employees, or any other person authorized to administer oaths. The charge shall describe the alleged violation and should include a statement of the dates, places, and circumstances, and the persons responsible for such acts and practices. Upon the filing of a charge alleging a violation, the Director shall cause to be served upon the charging party a written notice acknowledging the filing, and notifying the charging party of the time limits and choice of forums provided in this Chapter 14.09.

B. A charge shall not be rejected as insufficient because of failure to include all required information if the Department determines that the charge substantially satisfies the informational requirements necessary for processing.

C. A charge alleging a violation or pattern of violations under this Chapter 14.09 may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation under this Chapter 14.09.

#### **14.09.050 Time for filing charges**

Charges filed under this Chapter 14.09 must be filed with the Department within one year after the alleged violation has occurred or terminated.

#### **14.09.055 Charge-Amendments**

- A. The charging party or the Department may amend a charge:
1. To cure technical defects or omissions;

2. To clarify allegations made in the charge;
3. To add allegations related to or arising out of the subject matter set forth or attempted to be set forth in the charge;
4. To add as a charging party a person who is, during the course of the investigation, identified as an aggrieved person; or
5. To add or substitute as a respondent a person who was not originally named as a respondent, but who is, during the course of the investigation, identified as a respondent. For jurisdictional purposes, such amendments shall relate back to the date the original charge was first filed.

B. The charging party may amend a charge to include allegations of retaliation which arose after the filing of the original charge. Such amendment must be filed within one year after the occurrence of the retaliation, and prior to the Department's issuance of findings of fact and determination with respect to the original charge. Such amendments may be made at any time during the investigation of the original charge so long as the Department will have adequate time to investigate the additional allegations and the parties will have adequate time to present the Department with evidence concerning the additional allegations before the issuance of findings of fact and a determination.

C. When a charge is amended to add or substitute a respondent, the Director shall serve upon the new respondent within 20 days:

1. The amended charge;
2. The notice required under subsection 14.09.060.A; and
3. A statement of the basis for the Director's belief that the new respondent is properly named as a respondent. For jurisdictional purposes, amendment of a charge to add or substitute a respondent shall relate back to the date the original charge was first filed.

#### **14.09.060 Notice of charge and investigation**

A. The Director shall promptly, and in any event within 20 days of filing of the charge, cause to be

served on or mailed, by certified mail, return receipt requested, to the respondent, a copy of the charge along with a notice advising the respondent of respondent's procedural rights and obligations under this Chapter 14.09. The Director shall promptly make an investigation of the charge.

B. The investigation shall be directed to ascertain the facts concerning the violation alleged in the charge, and shall be conducted in an objective and impartial manner.

C. During the period beginning with the filing of the charge and ending with the issuance of the findings of fact, the Department shall, to the extent feasible, engage in settlement discussions with respect to the charge. A pre-finding settlement agreement arising out of the settlement discussions shall be an agreement between the charging party and the respondent and shall be subject to approval by the Director. Each pre-finding settlement agreement is a public record. Failure to comply with the pre-finding settlement agreement may be enforced under Section 14.09.100.

D. During the investigation, the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party or the respondent wishes to submit, including the respondent's answer to the charge. The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence including but not limited to books, records, correspondence, or documents in the possession or under the control of the person subpoenaed, and access to evidence for the purpose of examination and copying, and conduct discovery procedures which may include the taking of interrogatories and oral depositions.

E. The Director may require a fact-finding conference or participation in another process with the respondent and any of respondent's agents and witnesses and the charging party during the investigation in order to define the issues, determine which elements are undisputed, resolve those issues which can be resolved, and afford an opportunity to discuss or negotiate settlement. Parties may have their legal counsel present if desired.

#### **14.09.065 Procedure for investigations**

A. A respondent may file with the Department an answer to the charge no later than ten days after receiving notice of the charge.

B. The Director shall commence investigation of the charge within 30 days after the filing of the charge. The investigation shall be completed within 100 days after the filing of the charge, unless it is impracticable to do so. If the Director is unable to complete the investigation within 100 days after the filing of the charge, the Director shall notify the charging party and the respondent of the reasons therefor. The Director shall make final administrative disposition of a charge within one year of the date of filing of the charge, unless it is impracticable to do so. If the Director is unable to make a final administrative disposition within one year of the filing of the charge, the Director shall notify the charging party and the respondent of the reasons therefor.

C. If the Director determines that it is necessary to carry out the purposes of this Chapter 14.09, the Director may, in writing, request the City Attorney to seek prompt judicial action for temporary or preliminary relief to enjoin any violation pending final disposition of a charge.

#### **14.09.070 Findings of fact and determination of reasonable cause or no reasonable cause**

A. The results of the investigation shall be reduced to written findings of fact and a determination shall be made by the Director that there is or is not reasonable cause for believing that a violation has been, is being or is about to be committed, which determination shall also be in writing and issued with the written findings of fact. The findings and determination are “issued” when signed by the Director and mailed to the parties.

B. Once issued to the parties, the Director’s findings of fact, determination, and order may not be amended or withdrawn except upon the agreement of the parties or in response to an order by the Commission after an appeal taken pursuant to Section 14.09.075; provided, that the Director may correct clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the Director’s own motion.

#### **14.09.075 Determination of no reasonable cause-Appeal from and dismissal**



If a determination is made that there is no reasonable cause for believing a violation under this Chapter 14.09 has been, is being, or is about to be committed, the charging party may appeal such determination to the Commission within 30 days of the date the determination is signed by the Director by filing a written statement of appeal with the Commission. The Commission shall promptly deliver a copy of the statement to the Department and respondent and shall promptly consider and act upon such appeal by either affirming the Director's determination or, if the Commission believes the Director should investigate further, remanding it to the Director with a request for specific further investigation. In the event no appeal is taken, or such appeal results in affirmance, or if the Commission has not decided the appeal within 90 days from the date the appeal statement is filed, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Department.

#### **14.09.080 Determination of reasonable cause-Conciliation**

A. If the Director determines that reasonable cause exists to believe that a violation has occurred, is occurring, or is about to occur, the Director shall endeavor to eliminate the violation through efforts to reach conciliation. Conditions of conciliation may include, but are not limited to, the elimination of the violation, rent refunds or credits, reinstatement to tenancy, affirmative recruiting or advertising measures, payment of actual damages, and reasonable attorney's fees and costs, or such other remedies that will carry out the purposes of this Chapter 14.09. The Director may also require payment of a civil penalty as set forth in Section 14.09.100.

B. Any post-finding conciliation agreement shall be an agreement between the charging party and the respondent and shall be subject to the approval of the Director. The Director shall enter an order setting forth the terms of the agreement, which may include a requirement that the parties report to the Director on the matter of compliance. Copies of such order shall be delivered to all affected parties and shall be subject to public disclosure.

C. If conciliation fails and no agreement can be reached, the Director shall issue a written finding to that effect and furnish a copy of the finding to the charging party and to the respondent. Upon issuance of the

finding, except a case in which a City department is a respondent, the Director shall promptly cause to be delivered the entire investigatory file, including the charge and any and all findings made, to the City Attorney for further proceedings and hearing under this Chapter 14.09, pursuant to Section 14.09.085.

#### **14.09.085 Complaint and hearing**

A. Following submission of the investigatory file from the Director, the City Attorney shall, except as set forth in subsection 14.09.085.B, prepare a complaint against such respondent relating to the charge and facts discovered during the Department's investigation. The City Attorney shall file the complaint with the Hearing Examiner in the name of the Department and represent the interests of the Department at all subsequent proceedings.

B. If the City Attorney determines that there is no legal basis for a complaint to be filed or proceedings to continue, a statement of the reasons therefor shall be filed with the Department. The Director shall then dismiss the charge. Any party aggrieved by the dismissal may appeal to the Commission.

C. The City Attorney shall serve a copy of the complaint on respondent and furnish a copy of the complaint to the charging party and to the Department.

D. Within 20 days of the service of such complaint upon it, the respondent shall file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

E. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a hearing date and give notice thereof to the Commission, City Attorney, and respondent, and shall thereafter hold a public hearing on the complaint which shall commence no earlier than 90 days nor later than 120 days from the filing of the complaint, unless otherwise ordered by the Hearing Examiner.

F. After the complaint is filed with the Hearing Examiner, it may be amended only with the permission of the Hearing Examiner, which permission shall be granted when justice will be served and all parties are allowed time to prepare their case with respect to additional or expanded charges.

G. The hearing shall be conducted by the Hearing Examiner, a deputy hearing examiner, or a

hearing examiner pro tempore appointed by the Hearing Examiner from a list approved by the Commission, sitting alone or with representatives of the Commission if any are designated. Such hearings shall be conducted in accordance with written rules and procedures consistent with this Chapter 14.09 and the Administrative Code, Chapter 3.02.

H. The Commission, within 30 days after receiving notice of the date of hearing from the Hearing Examiner, at its discretion, may appoint two Commissioners, who have not otherwise been involved in the charge, investigation, fact finding, or other resolution and proceeding on the merits of the case, who have not formed an opinion on the merits of the case, and who otherwise have no pecuniary, private, or personal interest or bias in the matter, to hear the case with the Hearing Examiner. Each Commissioner shall have an equal vote with the Hearing Examiner. The Hearing Examiner shall be the chairperson of the panel and make all evidentiary rulings. The Hearing Examiner shall resolve any question of previous involvement, interest, or bias of an appointed Commissioner in conformance with the law on the subject. Any reference in this Chapter 14.09 to a decision, order, or other action of the Hearing Examiner shall include, when applicable, the decision, order, or other action of a panel constituted under this subsection.

#### **14.09.090 Decision and order**

A. Within 30 days after conclusion of the hearing, the Hearing Examiner shall prepare a written decision and order, file it as a public record with the City Clerk, and provide a copy to each party of record and to the Department.

B. Such decision shall contain a brief summary of the evidence considered and shall contain findings of fact, conclusions of law upon which the decision is based, and an order detailing the relief deemed appropriate, together with a brief statement of the reasons supporting the decision.

C. In the event the Hearing Examiner or a majority of the panel composed of the Hearing Examiner and Commissioners determines that a respondent has committed a violation under this Chapter 14.09, the Hearing Examiner may order the respondent to take such affirmative action or provide for such relief as is

deemed necessary to correct the violation, effectuate the purpose of this Chapter 14.09, and secure compliance therewith, including but not limited to rent refund or credit, reinstatement to tenancy, affirmative recruiting and advertising measures, or payment of reasonable attorney's fees and costs, or to take such other action as in the judgment of the Hearing Examiner will carry out the purposes of this Chapter 14.09. An order may include the requirement for a report on the matter of compliance.

D. The Department in the performance of its functions may enlist the aid of all departments of City government, and all said departments are directed to fully cooperate with the Department.

#### **14.09.095 Appeal from Hearing Examiner order**

A. The respondent may obtain judicial review of the decision of the Hearing Examiner by applying for a Writ of Review in King County Superior Court within 14 days from the date of the decision in accordance with the procedure set for in chapter 7.16 RCW, other applicable law, and court rules.

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 14.09.095.

#### **14.09.100 Civil penalties in cases alleging violations of this Chapter 14.09**

A. In cases either decided by the Director or brought by the City Attorney alleging a violation filed under this Chapter 14.09, in addition to any other award of damages or grant of injunctive relief, a civil penalty may be assessed against the respondent to vindicate the public interest, which penalty shall be payable to The City of Seattle and the Department. Payment of the civil penalty may be required as a term of a conciliation agreement entered into under subsection 14.09.080.A or may be ordered by the Hearing Examiner in a decision rendered under Section 14.09.090.

B. The civil penalty assessed against a respondent shall not exceed the following amount:

1. \$11,000 if the respondent has not been determined to have committed any prior violation;
2. \$27,500 if the respondent has been determined to have committed one other violation

during the five-year period ending on the date of the filing of this charge; or

3. \$55,000 if the respondent has been determined to have committed two or more violations during the seven-year period ending on the date of the filing of this charge; except that if acts constituting the violation that is the subject of the charge are committed by the same person who has been previously determined to have committed acts constituting a violation, then the civil penalties set forth in subsections 14.09.100.B.2 and 14.09.100.B.3 may be imposed without regard to the period of time within which those prior acts occurred.

#### **14.09.105 Enforcement of Department and Hearing Examiner orders and agreements**

A. In the event a City respondent fails to comply with any final order of the Director or of the Hearing Examiner, a copy of the order shall be transmitted to the Mayor, who shall take appropriate action to secure compliance with the final order.

B. In the event a respondent fails to comply with any final order issued by the Hearing Examiner not directed to the City or to any City department, the Director shall refer the matter to the City Attorney, for the filing of a civil action to enforce such order.

C. Whenever the Director has reasonable cause to believe that a respondent has breached a settlement or conciliation agreement, the Director shall refer the matter to the City Attorney for filing of a civil action to enforce such agreement.

#### **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.

#### **14.09.115 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 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 single family dwelling unit in which the owner or subleasing tenant or subrenting tenant occupy part of the single family dwelling unit.

D. 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.

E. 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.

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

#### **14.09.120 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.

Section 3. Section 3.14.931 of the Seattle Municipal Code, last amended by Ordinance 125231, is amended as follows:

### **3.14.931 Seattle Human Rights Commission-Duties**

The Seattle Human Rights Commission shall act in an advisory capacity to the Mayor, City Council, Office for Civil Rights, and other City departments in respect to matters affecting human rights, and in furtherance thereof shall have the following specific responsibilities:

- A. To consult with and make recommendations to the Director of the Office for Civil Rights and other City departments and officials with regard to the development of programs for the promotion of equality, justice, and understanding among all citizens of the City;
- B. To consult with and make recommendations to the Director of the Office for Civil Rights with regard to problems arising in the City which may result in discrimination because of race, religion, creed, color, national origin, sex, marital status, parental status, sexual orientation, gender identity, political ideology, age, ancestry, honorably discharged veteran or military status, genetic information, the presence of any ((sensory, mental, or physical)) disability, alternative source of income, ((the possession or use of)) participation in a Section 8 ((rent certificate)) or other subsidy program, right of a mother to breastfeed her child, or the use of a ((trained guide or)) service ((dog)) animal by a ((handicapped)) disabled person, and to make such investigations and hold such hearings as may be necessary to identify such problems;
- C. As appropriate, recommend policies to all departments and offices of the City in matters affecting civil rights and equal opportunity, and recommend legislation for the implementation of such policies;
- D. Encourage understanding between all protected classes and the larger Seattle community,

through long range projects;

E. Hear appeals and hearings as set forth in Chapters 14.04, 14.06, (~~and~~) 14.08, and 14.09 of the Seattle Municipal Code;

F. Report on a semi-annual basis to the Mayor and the City Council. The reports shall include an annual or semi-annual work plan, a briefing of the Commission's public involvement process for soliciting community and citizen input in framing their annual work plans, and updates on the work plans; and

G. Meet on a quarterly basis through a designated representative with the Seattle Women's Commission, the Seattle LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) Commission, and the Seattle Commission for People with Disabilities to ensure coordination and joint project development.

Section 4. Sections 1, 2, and 3 of this ordinance shall take effect and be in force 150 days after the effective date of this ordinance, to ensure there is adequate time for rule-making and any adjustments in business practices needed.

Section 5. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2017, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_



Edward B. Murray, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Monica Martinez Simmons, City Clerk

(Seal)