



# Fair Chance Housing

## Preventing the Use of Criminal Records in Tenant Screening

On Monday August 14, 2017, the Seattle City Council passed an ordinance 8-0, which prevents housing providers from considering a person's prior criminal history in tenant screening. A copy of the ordinance can be found [here](#). The Mayor signed the ordinance on August 23, 2017.

**Jurisdiction:** The law affects rental properties in the [City of Seattle](#) only.

**Effective Date:** The requirements of this new law become effective February 19, 2018.

Below is a summary of the background, on how we got here, and a detailed summary of the law itself.

### Background on the Policy:

Since 2010, advocates have pushed the concept of removing barriers to housing for people with criminal records. In 2013 and 2014 the City of Seattle convened a stakeholder group to create legislation addressing barriers to employment and housing for those with a criminal record. WMFHA was a part of this stakeholder group. Ultimately, the stakeholder group moved forward with employment only.

In 2015, the United States Supreme court issued a decision in [Texas Dep't of Housing and Community Affairs v. The Inclusive Communities Project](#), which extended the theory of disparate impact to housing. Also in 2015, amidst strong rent growth in the region, and an increased need for more workforce and low-income housing, the City of Seattle released the [Housing Affordability and Livability Agenda \(HALA\)](#), which provided 65 recommendations to increase access to housing for low-income families and increase the affordable housing stock in the City of Seattle. WMFHA participated in the HALA stakeholder committee

In April 2016, the United State Department of Housing and Urban Development released [Guidance](#) on the use of arrest and criminal records in tenant screening. During this time, WMFHA began participating in the

Fair Chance Housing stakeholder group. The group met approximately seven times from January 2016 to February 2017, during which rental housing providers and advocates discussed and outlined legislation that would restrict the use of criminal records in tenant screening.

Outside of the stakeholder group process, WMFHA and other rental housing providers met with the Mayor and his staff about the ordinance, particularly the look back period (the amount of time a housing provider can consider an individual's prior criminal convictions). Additionally, some of our members met with the Mayor, his staff and the City officials in charge of drafting the ordinance.

In all, WMFHA Government Affairs and leadership understood that our best opportunity to shape this policy landed in the stakeholder process; once this legislation made its way to the City Council, housing providers had little ability to create reasonable solutions to assist those with a criminal record in successfully re-entering society.

That wasn't the end of WMFHA's advocacy efforts to make a reasonable policy. WMFHA contacted City Council members and their staff to describe our concerns with the ordinance. WMFHA reached out to other members within the Seattle community, including real estate partners and local alliances for assistance in advocating alongside us and on our behalf. WMFHA also distributed a letter to our members which was distributed to residents within rental communities in Seattle. Among these advocacy efforts, reaction was mixed and there wasn't a strong sense of support among these partners to stop this policy from proceeding.

Though WMFHA and other rental housing providers advocating for maintaining the state allowed 7-year lookback period, or a reasonable compromise of four to five years, the Mayor presented the ordinance to the City Council with a two-year lookback period. From there the Council dissected the ordinance

## Summary of the Law:

- The law requires a written notice to all applicants, which explains that absent an exception, criminal history cannot be used in the tenant screening process.

[Housing Provider] is prohibited from requiring disclosure, asking about, rejecting an applicant, or taking adverse action based on any arrest record, conviction record, or criminal history, except sex offender registry information.

The application must include the screening criteria used to screen any individual against registry information.

- The law does not prevent a housing provider from asking on the application whether the applicant has been convicted as an adult of a crime requiring registry.
- The law prevents housing providers from requiring disclosure of or taking adverse action based on any arrest, pending charge, or criminal conviction. Housing providers may continue to utilize the sex offender registry to obtain information about a prospective applicant.
- The law prevents use of sex offender registry information where the offense occurred while the applicant was a juvenile. Juvenile convictions that require registration on the sex offender registry cannot be considered in the application process, even if the applicant is now an adult.
- Prior to taking any adverse action on an applicant based on sex offender registry information, the rental housing provider must consider any supplemental information provided to the housing provider by the applicant. Supplemental information means information provided by the applicant, or produced on their behalf, with respect to their rehabilitation or good conduct. This includes but is not limited to:
  - Conviction information
  - Written or oral statements by the applicant,
  - Past or present employers,
  - Prior landlords,
  - Members of the judiciary or law enforcement,
  - Members of clergy, counselors or therapists, social workers or similar person
  - Certificate of rehabilitation
- Any adverse action taken against an applicant on the basis of sex offender registry information, must be supported by a legitimate business reason. A legitimate business reason exists when a policy or

practice is necessary to achieve a substantial legitimate business interest, after considering the following:

- The nature and severity of the conviction;
- The number and types of convictions found in the registry information;
- The time that has elapsed since the date of conviction;
- The age of the individual at the time of the conviction;
- Evidence of good tenant history before and/or after the conviction occurred;
- Any supplemental information related to the individual's rehabilitation, good conduct or additional facts.
- In considering a legitimate business reason, the housing provider can consider the convictions appearing on the sex offender registry
- Any adverse action notice must be provided in writing by email, mail, or in person, and specifically state the registry information that was the basis for the adverse action. Practically speaking, this will be the underlying conviction.
- In the adverse action notice, housing providers must provide the name and address of the consumer reporting agency used to provide the consumer report, and explain that applicants can obtain one free copy of the screening report from the consumer reporting agency in the event of denial.

## Membership Follow-up:

WMFHA encourages all members to review and update screening criteria to make sure your screening criteria are consistent with this new law and consistent with your company's goals.

- Review credit and income requirements
- Conduct rental reference inquiries through telephone calls to prior housing providers
- Conduct employment inquiries to verify employment and income through telephone calls

The WMFHA Government Affairs team worked hard on a legislative compromise in 2016, to provide applicants with the option of using a Comprehensive Reusable Tenant Screening Report. In the past we have advocated for our members to accept Comprehensive Reusable Tenant Screening Reports as a show of commitment to the legislative compromise. Going forward in the City of Seattle, WMFHA does not recommend accepting Comprehensive Reusable Tenant Screening Reports,

because of the possible unintended consequences of obtaining an applicant's criminal history without the opportunity to consider it.

More importantly, over the next couple years, we need to track the impact of this ordinance and obtain data from our members on the effect of this ordinance to your property operations. We'd like you to provide us with the following:

- How have you changed your screening criteria as a result?
- Have you seen an increase in criminal activity as a result of this ordinance?
  - What kind of criminal activity is more prevalent?
  - What actions have been taken to mitigate the risk? And at what cost to you as owners and operators?
- Have you increased the number of 10-day notices to comply, and evictions related to criminal behavior since the effective date of this ordinance?

Related Press:

[Understanding the Fair Chance Housing Ordinance](#) SCInsight

[Seattle Bans Landlords from Running Criminal Background Checks](#) Reason

[Seattle Bans Criminal Checks on Tenants](#) Liberty Nation

[What is a Landlord to do Now in Seattle?](#) Rental Housing Journal

[Seattle Rental Applicants' Criminal Histories Virtually Off-Limits Under New Law](#) Seattle Times

[Seattle Bars Landlords from Checking on Criminal History](#) Associated Press

[Seattle Council Passes Fair Housing Ordinance](#) KING 5

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