

ORDINANCE NO. ORD-21-06

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| First Reading: | March 1, 2021 | Approved: | April 5, 2021 |
| | March 15, 2021 | Published: | April 8, 2021 |
| Public Hearings: | March 15, 2021 | Effective: | April 18, 2021 |
| | April 5, 2021 | | |

CHAPTER 122
(FAIR CHANCE ACCESS TO HOUSING)

AN ORDINANCE TO ADD CHAPTER 122 (FAIR CHANCE ACCESS TO HOUSING)
TO TITLE IX OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor ordains:

Section 1. That Chapter 122 (Fair Chance Access to Housing) of Title IX of the Code of the City of Ann Arbor be added as follows:

9:600. -Title.

This chapter shall be known as the “Fair Chance Access to Housing Ordinance” or “Fair Chance Housing Ordinance” of the City of Ann Arbor.

9:601. – Purpose.

The purpose of this chapter is to give previously incarcerated Individuals or other Individuals with a Criminal History the opportunity to compete for rental Housing and/or reside with family members and others. Such Housing is crucial for successful reintegration into the community, obtaining gainful employment, and reducing homelessness.

9:602 – Definitions.

For the purposes of this chapter, the following words and phrases have the following meanings:

- (1) *Adverse Action* means a refusal to engage in or negotiate a rental unit transaction; denying tenancy; representing that a rental unit is not available for rent or lease when it is, in fact, available; refusing to add a household member to an existing lease; applying different terms or conditions to a rental unit transaction; or otherwise making a rental unit unavailable.
- (2) *Aggrieved Individual* means an Applicant who believes they were subject to

an Adverse Action; a tenant who believes they or their Close Family Member was subject to an Adverse Action at their rental unit based on the application of an Applicant to reside in such family member's rental unit; or a tenant who believes they were subject to an Adverse Action based on the application of an Individual to reside in such tenant's rental unit to replace an existing tenant, add a new tenant, or to sublet.

(3) *Applicant* means an Individual or group of Individuals considered or who request(s) to be considered for tenancy within a Housing accommodation, including any rental unit.

(4) *Arrest Record* means information indicating that an Individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor, or other offense by any law enforcement or military authority.

(5) *Background Check Report* means any report regarding an Applicant's Criminal History, including, but not limited to, those produced by law enforcement agencies, courts, or by any consumer reporting or tenant screening agency.

~~(6)~~ *Close Family Member* means spouse, domestic partner, child, sibling, parent, grandparent, or grandchild.

~~(6)~~ *Conditional Offer* means an offer that is conditioned on the results of the Housing Provider's inquiry into or gathering information about the Applicant's Criminal History.

~~(7)~~ _____

~~(7)~~(8) *Conviction* means the final judgment arising from a verdict of guilty, a plea of guilty, or a plea of nolo contendere.

~~(8)~~(9) *Criminal History* means information transmitted orally or in writing or by any other means, and obtained from any source, including, but not limited to, the Individual to whom the information pertains, a government agency or a Background Check Report, regarding: one or more Convictions or Arrest Records; a Conviction that has been sealed, dismissed, vacated, expunged, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute; a determination or adjudication in the juvenile justice system; a matter considered in or processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.

~~(9)~~(10) _____ *Housing* means any residential rental housing, building, or unit, whether legally permitted or not, in the City of Ann Arbor, with the exception

of the following:

- (a) Single-family dwellings where the owner or subleasing tenant occupies the dwelling as their principal residence;
- (b) An accessory rental unit or detached accessory rental unit wherein the owner or Individual entitled to possession thereof maintains a permanent residence on the same lot;
- (c) A dwelling unit in a residential property that is divided into a maximum of 3 units, one of which is occupied by the owner as their principal residence;
- (d) Units where the owner has previously occupied the rental unit as their principal residence and has the right to recover possession for their occupancy as a principal residence under a written rental agreement with the current tenants; and
- (e) Tenant-occupied units where an occupying tenant seeks to replace an existing co-tenant, add an additional co-tenant, or sublet the unit, provided that the occupying tenant remains in occupancy.

~~(10)~~(11) *Housing Provider* means a landlord, owner, lessor, sublessor, assignee, or their agent, or any other Person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a Housing facility in the City, except for Public Housing Agencies as defined in 24 CFR § 982.4 and Permanent Supportive Housing providers.

~~(11)~~(12) *Individual* means a human being, as distinguished from a Person, as defined under this Code.

~~(12)~~ *Permanent Supportive Housing (PSH)* is a combination of affordable housing and voluntary support services provided by the same Person and/or its subsidiaries and/or affiliates that helps people achieve housing stability and lead healthier, productive lives.

~~(13)~~

~~(13)~~(14) *Person* is as defined in Title I, Section 1.8 of this Code.

9:603. - Restrictions on use of Criminal History in Housing decisions.

Except as provided in Section 9:605 of this Code, a Housing Provider shall not, at any time or by any means, whether direct or indirect, inquire about an Applicant's Criminal History, require an Applicant to disclose Criminal History, require an Applicant to authorize the release of Criminal History or, if such information is received, base an Adverse Action in whole or in part on an Applicant's Criminal History.

9:604. - Requirements for Housing Providers.

- (1) It shall be unlawful for any Housing Provider to produce or disseminate any advertisement related to Housing that expresses, directly or indirectly, that any Individual with Criminal History will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by state or federal law.
- (2) The City shall publish and make available to Housing Providers, in English, Spanish, and all languages spoken by more than 5 percent of the City's population, a notice suitable for posting that informs Applicants for Housing of their rights under this chapter. The notice shall contain the following information:
 - (a) A description of the restrictions and requirements of this chapter; and
 - (b) Instructions for submitting a complaint to the City about a violation of this chapter.
- ~~(3) Housing Providers shall include the notice required by this section prominently on their application materials, websites, and at any locations under their control that are frequently visited by Applicants.~~
- ~~(3)~~
- (4) Nothing in this section shall prohibit a Housing Provider from complying with a request by the City to provide records for purposes of demonstrating compliance with the requirements of this chapter.

9:605. – Exceptions.

- (1) It shall not be a violation of this chapter for a Housing Provider to comply with federal or state laws that require the Housing Provider to exclude tenants based on certain types of Criminal History. If such a legal requirement applies, the Housing Provider shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider first does all of the following:
 - (a) Determines that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants aside from any federal or state mandated Criminal History criteria;
 - (b) Gives to the Applicant a Conditional Offer of a rental agreement that commits to providing the Housing to the Applicant as long as the Applicant meets federal and state mandated Criminal History criteria;

- (c) Provides written advance notice to the Applicant stating that the Housing Provider will review the Applicant's Criminal History for the sole purpose of complying with any applicable federal and state laws, and describing the specific legal requirements and reasons the Applicant may be disqualified; and
 - (d) Requests written consent from the Applicant, or if the Applicant objects, provides the Applicant the opportunity to withdraw the rental application.
 - (2) The denial of Housing by a Housing Provider because of a past criminal Conviction may be based only on state and federal requirements.
 - (3) If any Adverse Action by a Housing Provider is based in whole or in part on the Applicant's Criminal History in compliance with federal or state law as described in this section, the Housing Provider shall provide a written notice to the Applicant regarding the Adverse Action that includes, at a minimum, all of the following:
 - (a) The reason(s) for the Adverse Action;
 - (b) A copy of any Criminal History, Background Check Report, or other information related to the Applicant's Criminal History that served as a basis for the Adverse Action;
 - (c) An opportunity to respond with rebutting or mitigating information prior to the denial of Applicant's Housing application; and
 - (d) Instructions regarding how to file a complaint about the Adverse Action with the City.
- ~~(1)~~(4) Nothing in this chapter shall be construed to apply to a Public Housing Agency as defined by 24 CFR § 982.4, including the Ann Arbor Housing Commission and its affiliated entities.
- ~~(2)~~(5) Nothing in this chapter shall be construed to apply to Permanent Supportive Housing providers.
 - (a) Permanent Supportive Housing providers adhere to *Housing First* policies by housing those who need it most, with no pre-conditions, offer a broad array of supports to help Individuals stay housed, and practice harm reduction to engage and support people on their path to recovery.
 - (b) To qualify as exempt as a Permanent Supportive Housing provider

under this subsection, the Person must be a homeless service provider agency as recognized by the Washtenaw County Continuum of Care Board.

9:606. - Retaliation Prohibited.

It shall be a violation of this chapter to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter, or to take any Adverse Action against any Individual because the Individual exercised or attempted in good faith to exercise any right protected under this chapter.

9:607. - Notice to Housing Providers.

The City Administer shall cause this chapter to be mailed to all residential rental property owners registered with the City within 90 days of final adoption of the ordinance first enacting this chapter.

9:608. - Complaint procedure.

- (1) A complaint about a violation of this chapter should be made in writing to the Ann Arbor Human Rights Commission. The complaint may be submitted in person, by mail, or electronically. The complaint should contain the name, address, and phone number and/or email address of the complainant; the location, date, and description of the violation; and the name, address, and phone number and/or email address of the respondent.
- (2) Upon receipt, the Human Rights Commission will review the complaint, provide a copy of the complaint to the City Attorney's Office, communicate with the complainant, and take appropriate action with respect to the matter, including, but not limited to:
 - (a) Where appropriate, referring the complainant to other local, state, or federal entities for investigation and remedy;
 - (b) Informally mediating the matter with the involved parties;
 - (c) Referring the complaint to the City Attorney for further investigation pursuant to this chapter; or
 - (d) Dismissing the complaint, after review with the City Attorney, if the allegations do not constitute a violation of this chapter.
- (3) The Human Rights Commission will take action on the complaint within 90

days of receipt of the complaint. If additional time is necessary, the Human Rights Commission will notify the complainant of the need for additional time. All communications with the complainant regarding actions taken or additional time necessary will be in writing, with a copy to the City Attorney.

- (4) The City Attorney will notify the Human Rights Commission in writing of actions taken by the City Attorney's Office on complaints referred to that office by the Human Rights Commission.
- (5) All records submitted to or obtained by the Human Rights Commission or other City entities containing any Criminal History or Background Check Report of any Aggrieved Individual shall be kept confidential to the extent permissible by law.
- (6) All complaints received by the Human Rights Commission and responses from the Human Rights Commission will be retained by the City of Ann Arbor for at least 3 years.
- (7) The Human Rights Commission will provide an annual report to City Council regarding the complaints received and actions taken.
- (8) No Individual shall provide false information to a Human Rights Commissioner or City employee investigating a complaint regarding a violation of this chapter.
- (9) For an investigation under this chapter, the City Attorney may request a Person to produce books, papers, records or other documents which may be relevant to a violation or alleged violation of this chapter. If said Person does not comply with such request, the City Attorney may apply to Washtenaw County Circuit Court for an order requiring production of said materials.

9:690. - Conciliation agreements.

In cases involving alleged violations of this chapter, the City Attorney may enter into agreements whereby Persons agree to methods of ceasing violations of this chapter. Such agreements may be reviewed by the Human Rights Commission. Violations of such agreements shall be violations of this chapter.

9:610. - Injunctions.

The City Attorney may commence a civil action to obtain injunctive relief to prevent conduct prohibited by this chapter or to enforce a conciliation agreement.

9:611. - Prosecution.

Prosecution for violation of this chapter may be initiated by the City Attorney on behalf of an affected Individual on the basis of an investigation initiated by a complaint to the Human Rights Commission.

9:612. - Penalties.

- (1) A violation of any provision of this chapter is a civil infraction punishable by a fine of not more than \$500.00 for each day upon which a violation occurs, plus all costs of the action. The court may issue and enforce any judgment, writ, or order necessary to enforce this chapter.
- (2) A violation proved to exist on a particular day shall be presumed to exist on each subsequent day unless it is proved that the violation no longer exists.
- (3) Nothing contained in this chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the city or any other Person for the prevention or correction of discrimination.

9:613. - Private actions for damages or injunctive relief.

- (1) To the extent allowed by law, an Individual who is the victim of an action in violation of this chapter may bring a civil action for appropriate injunctive relief or damages or both against the Person(s) who acted in violation of this chapter.
- (2) As used in Section 9:613(1), damages includes damages for injury or loss caused by each violation of this chapter, including reasonable attorney fees.
- (3) Private actions and remedies under this section shall be in addition to any actions for violations which the City may take.

Section 2. This ordinance shall take effect and be in force ten days from the date of legal publication.

CERTIFICATION

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan, at its regular session of April 5, 2021.

(Date)

Jacqueline Beaudry, Ann Arbor City Clerk

Christopher Taylor, Mayor of the City of Ann Arbor

I hereby certify that the foregoing ordinance received legal publication on the City Clerk's webpage on April 8, 2021.

Jacqueline Beaudry, Ann Arbor City Clerk