

ORDINANCE NO. 01-19  
CHAPTER 26  
ARTICLE V

AN ORDINANCE to amend Chapter 26 of the 1984 Detroit City Code, *Housing*, by adding Article V, *Fair Chance Access to Rental Housing*, consisting of Sections 26-5-1 through 26-5-20, to provide for the maintenance and protection of the health, safety and general welfare of the public and to provide citizens with criminal records a fair opportunity to secure housing by regulating the use of criminal background checks as part of the tenant screening process, thereby facilitating re-integration into society and reducing the likelihood those citizens will reoffend; to establish that the City undertaking is limited to promotion of the general welfare; to set forth definitions and applicability of the article; to regulate the use and inquiry of criminal convictions by housing providers; to establish standards for adverse action; to set forth exceptions to this article; to establish procedures for the use of evidence of rehabilitation or other mitigating factors in housing decisions; to require individualized assessments in certain circumstances; to set forth notice and posting requirements for housing providers; to establish guidelines for maintenance of records by housing providers; to protect the exercise of rights and prohibit retaliation; to require community outreach; to set forth confidentiality provisions; to establish implementation and enforcement provisions, including penalties for violations; and to establish administrative rules and annual reporting requirements.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

**Section 1.** Chapter 26 of the 1984 Detroit City Code, *Housing*, be amended by adding Article V, *Fair Chance Access to Rental Housing*, consisting of Sections 26-5-1 through 26-5-20, to read as follows:

**CHAPTER 26. HOUSING  
ARTICLE V. FAIR CHANCE ACCESS  
TO RENTAL HOUSING**

**Sec. 26-5-1. Purpose.**

The purpose of this article is to enhance the health, safety and general welfare of the public by ensuring citizens with arrest and conviction records have a fair opportunity to secure housing by

regulating the use of criminal background checks as part of the tenant screening process, thereby facilitating re-integration into society, reducing recidivism and its associated criminal justice and societal costs. Barriers to opportunities for people with arrest or conviction records increase recidivism and jeopardize the safety of the public, disrupt the financial and overall stability of affected families and communities, and impede the City from achieving its maximum potential of economic growth.

**Sec. 26-5-2. City undertaking limited to promotion of general welfare.**

(a) This article does not intend, and shall not be construed, to require a housing provider to give preference to anyone or to rent to an unqualified tenant with an arrest or conviction record. Moreover, this article shall not be construed to limit a housing provider's ability to choose the most qualified and appropriate candidate from applicants for housing.

(b) This article does not intend, and shall not be construed, to create or impose a duty or create a private cause of action against the City, its elected officials, appointees, officers, agents, or employees.

**Sec. 26-5-3. Definitions.**

For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:

*Administering agency* means the City's Department of Civil Rights, Inclusion and Opportunity or CRIO.

*Adverse action* means to evict an individual, fail or refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or to reduce any tenant subsidy. The adverse action must relate to real property located in the City of Detroit.

*Applicant* means an individual applying to rent or lease eligible housing. It also includes an individual applying to be added to an existing lease for eligible housing.

*Arrest* means a record from any jurisdiction that does not result in a conviction and includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency or charged with, indicted, or tried and acquitted for any felony, misdemeanor, or other criminal offense. Arrest is a term that is separate

and distinct from, and that does not include, unresolved arrest.

*Background check report* means any criminal history report accessible through the Michigan State Police Internet Criminal History Access Tool (I-CHAT), courts, or by any consumer reporting, or tenant screening, agency or business.

*Conviction* means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor, provided that the conviction is one for which the person has been placed on probation, fined, imprisoned or paroled. Those matters identified in Section 26-5-5 about which a housing provider may not inquire and as to which they may not base an adverse action, are not considered convictions for purposes of this article.

*Conviction history* means information regarding one or more convictions or unresolved arrests, 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 or a background check report.

*Directly-related conviction* means that the conduct for which the person was convicted or that is the subject of an unresolved arrest that has a direct and specific negative bearing on the health, safety, or right to peaceful enjoyment of the premises by persons and includes one or more of the offenses listed in Section 26-5-6(b). In determining whether the conviction or unresolved arrest is directly related to the housing, the housing provider shall consider whether the housing offers the opportunity for the same or similar offense to occur and whether circumstances leading to the conduct for which the person was convicted will recur in the housing, and whether supportive services that might reduce the likelihood of a recurrence of such conduct are available on-site. Those matters identified in Section 26-5-5(2) about which a housing provider may not inquire and as to which they may not base an adverse action may not qualify as a directly-related convictions.

*Dwelling or dwelling unit* means a single unit providing complete, independent living facilities occupied, or intended to be occupied, in whole or in part by one (1) or more persons, including permanent space and provisions for living, cooking, eating, sanitation, and sleeping.

*Eligible housing* means any rental property in the City of Detroit available for

rent or lease where a single structure contains more than four (4) dwelling units or more than four (4) rental properties are owned by the same person.

*Enforcing agency* means the Detroit Police Department or DPD.

*Evidence of rehabilitation or other mitigating factors* means, but shall not be limited to, a person's satisfactory compliance with all terms and conditions of parole or probation (however, inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with terms and conditions of parole or probation or both); employer recommendations, especially concerning a person's post-conviction employment; educational attainment or vocational or professional training since the conviction, including training received while incarcerated; completion or active participation in rehabilitative treatment e.g., alcohol or drug treatment; letters of recommendation from community organizations, counselors or case managers, teachers, community leaders or probation or parole officers who have observed the applicant since his or her conviction(s); and the age of the person at the time of the conviction. Successful completion of parole, probation, mandatory supervision, or post release community supervision shall create a presumption of rehabilitation. Examples of mitigating factors that are offered voluntarily by the person may include, but are not limited to, explanation of the precedent coercive conditions, intimate physical or emotional abuse, or untreated substance abuse or mental illness that contributed to the conviction.

*Housing provider* means any entity that owns, master leases, manages, or rents eligible housing in the City of Detroit. Any agent, such as a property management company, that makes tenancy decisions on behalf of the aforementioned entities shall also be considered a housing provider.

*Inquire* means any direct or indirect conduct intended to gather information from or about an applicant, potential applicant or candidate, using any mode of communication, including but not limited to application forms, interviews, and background check reports.

*Person* means any individual, partnership, firm, company, corporation, association, sole proprietorship, limited liability company, joint venture, estate, trust, or any other legal entity.

*Rental property* means a non-owner occupied dwelling unit or dwelling units that:

(1) Is or are let or occupied by persons, including a family member of the owner, pursuant to an oral or written rental contract, or lease, or other oral or written agreement or understanding for occupation, with or without, monetary compensation; or

(2) Will be offered for occupancy under an oral or written rental contract or lease, or other oral or written agreement or understanding for occupation, with or without, monetary compensation to any person; or

(3) Is or are contained within a building with two (2) or more dwelling units that are not occupied by the owner; or

(4) Has or have been advertised to the public or previously registered with the city as rental property.

*Unresolved arrest* means an arrest that is undergoing an active pending criminal investigation or trial that has not yet been resolved. An arrest has been resolved if the arrestee was released and no accusatory pleading was filed charging him or her with an offense, or if the charges have been dismissed or discharged by the prosecuting attorney or the court.

**Sec. 26-5-4. Applicability; eligible housing.**

This article shall apply to all housing providers with eligible housing as defined in this article available for rent or lease located in the City of Detroit.

**Sec. 26-5-5. Prohibition on housing provider to inquire into criminal convictions of applicants and their household members until being interviewed or qualified; basis for adverse action.**

(a) Except as provided in Section 26-5-6, housing providers shall not:

(1) Inquire about or require applicants to disclose conviction history as part of tenant screening process until the housing provider has first:

(i) Determined the applicant is qualified to rent the housing unit under all of the housing provider's criteria not related to potential past criminal convictions or an unresolved arrest; and

(ii) Provided to the applicant a conditional lease agreement that commits the unit to the applicant as long as the applicant passes the conviction history review.

(2) Base an adverse action in whole or in part on:

(i) An unresolved arrest or an arrest not leading to a conviction;

(ii) Participation in or completion of a diversion or a deferral of judgment program;

(iii) A conviction that has been judicially dismissed, expunged, voided, invalidated or otherwise rendered inoperative by a court of law or by executive pardon.

(iv) A conviction or any other determination or adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system;

(v) A misdemeanor conviction that is more than 5 years old, measured from the date of sentencing; or

(vi) Information pertaining to an offense or violation other than a felony or misdemeanor, such as a civil infraction.

(3) A housing provider shall not include questions regarding or require applicants to disclose on any housing application the facts or details of any conviction history or any matter identified in Subsection (2) of this Section.

(b) It is the responsibility of a housing provider to ensure that its employees and agents comply with this article.

**Sec. 26-5-6. Exceptions to prohibition.**

(a) This article does not limit the right of a housing provider to take any of the following actions:

(1) Conduct conviction history or obtain background check reports on applicants where there is a statutory duty to do so; or

(2) Notify applicants that applicable laws, including those set forth in Subsection (b) of this Section will disqualify an individual with a particular conviction history from eligibility for tenancy.

(b) Regarding applicants and their household members, a housing provider may base an adverse action in whole or in part on directly-related convictions that includes one or more of the following:

(1) Any conviction where state or federal law prohibits the applicant from being eligible for public housing; or

(2) Any conviction that leads to the applicant becoming a lifetime registered sex offender; or

(3) Any conviction for violent or drug-related felonies; or

(4) Conviction for felonies committed within the last 10 years or imprisonment for felonies within the last 5 years; or

(5) Any conviction for crimes against landlords, management agents, their employees or agents, or other tenants or real property; or

(6) Any conviction or plea to any crime involving arson; or

(7) Any conviction or plea to any crime involving metal theft, vandalizing or otherwise damaging real property.

**Sec. 26-5-7. Procedures for use of evidence of rehabilitation or other mitigating factors in housing decisions; requirement for individualized assessment.**

(a) Consistent with the procedures in this section and subject to state and federal law, a housing provider shall offer the applicant a reasonable opportunity to present evidence of rehabilitation or other mitigating factors related to convictions within the previous 5 years.

(b) In reviewing an applicant's criminal history and making a decision related to eligible housing based on such history, a housing provider shall conduct an individualized assessment, considering only:

(1) Convictions that warrant denial based on local, state or federal law; and

(2) Time that has elapsed since the conviction; and

(3) Whether it is a directly-related conviction that has direct and specific negative bearing on the safety of persons or real property; and

(4) Any evidence of inaccuracy or evidence of rehabilitation or other mitigating factors presented by the applicant.

(c) If a housing provider intends to base an adverse action related to eligible housing on an item or items in the applicant's conviction history, prior to taking any adverse action the housing provider shall provide the applicant with a copy of the background check report, and shall notify the applicant of the prospective adverse action and the items forming the basis for the prospective adverse action.

(d) If, within 14 calendar days of the date that the notice described in Subsection (c) of this Section is provided by the housing provider to the applicant, the applicant gives the housing provider notice in writing of evidence of the inaccuracy of the item or items of conviction history or evidence of rehabilitation or other mitigating factors set forth in this Section, the housing provider shall delay any adverse action for a reasonable period of not less than 5 calendar days after receipt of the information. During that time the housing provider shall reconsider the prospective adverse action in light of the information provided by the applicant or potential applicant.

(e) The housing provider shall promptly notify the applicant of any final adverse action based upon their conviction history or contents of the criminal background check.

(f) It shall be unlawful for any housing provider to engage in any communication, including the production or dissemination of advertisements, related to eligible housing that expresses, directly or indirectly, that any person with an arrest or conviction record 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 local, state, or federal law. For purposes of this Subsection, engaging in a communication includes, but is not limited to, making a verbal statement or producing or disseminating any solicitation, advertisement, or signage.

**Sec. 26-5-8. Notice and posting requirements for housing providers.**

(a) A housing provider shall state in all solicitations or advertisements for the rental or lease of eligible housing, or made on their behalf, that the housing provider shall consider qualified applicants consistent with this article. This language shall include, at minimum, the following statement:

"The rental or lease of this property must comply with the City of Detroit ordinance regulating the use of criminal background checks as part of the tenant screening process to provide citizens with criminal backgrounds a fair opportunity. For additional information, please contact the City of Detroit Office of Civil Rights, Inclusion and Opportunity."

(b) The administering agency shall publish and make available to housing providers, in all languages spoken by more than 5% of the city population, a notice suitable for posting that informs applicants for eligible housing of their rights under this article. This notice shall be updated on or before December 1st of any year in which there is a change in the languages spoken by more than 5% of the city population.

(c) In addition to the requirements for solicitations or advertisements in Subsection (a) of the Section, housing providers shall post a notice prominently on their website and at any location under their control that is frequently visited by applicants or potential applicants for the rental or lease of eligible housing in the City. This notice shall also be available to applicants in hard copy and provided with an application. The notice requirements in this Section shall contain the following additional information which may be summarized by the housing provider or available from the administering agency pursuant to 26-5-14(a)(1):

(1) A description of those matters

identified in Section 26-5-5 that may not be considered by the housing provider;

(2) A description of the restrictions and requirements that Section 26-5-5 imposes on housing providers when inquiring about conviction history in connection with an application for the rental or lease of eligible housing in the City;

(3) The circumstances and timeline under which the applicant or potential applicant has a right to provide evidence of rehabilitation and other mitigating factors as provided in Section 26-5-7; and

(4) The telephone number, email address, and mailing address of the administering agency that the applicant or potential applicant may use to make a report if he or she believes the housing provider has violated this article in their interactions with the applicant or potential applicant.

**Sec. 26-5-9. Housing Provider records.**

(a) Unless prohibited by federal or state law, a housing provider shall maintain and retain records of tenant application forms, and other pertinent data and records required under this article, for a minimum of one year from the date of application, and shall allow the administering or enforcing agencies access to such records, with appropriate notice and at a mutually agreeable time, to monitor or verify compliance with the requirements of this article.

(b) At no time shall the administering or enforcing agencies require a housing provider to provide any information or documents the disclosure of which would violate local, state or federal law.

(c) Where a housing provider does not maintain or provide adequate records documenting compliance with this article or does not allow reasonable access to such records, the Office of the Chief Financial Officer or other city department or agency shall have the authority to provide all nonfinancial information necessary to fulfill the administering or enforcing agencies responsibilities under this article subject to confidentiality provisions of this article and all applicable laws.

**Sec. 26-5-10. Exercise of rights protected; retaliation prohibited.**

(a) It shall be unlawful for a housing provider or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this article.

(b) It shall be unlawful for a housing provider to interrupt, terminate, or fail or refuse to initiate or conduct a transaction involving the rental or lease of eligible

housing, including falsely representing that such property is not available for rental or lease, or otherwise take adverse action against a person in retaliation for exercising rights protected under this article. Such rights include but are not limited to:

(1) The right to file a complaint or inform any person about a housing provider's alleged violation of this article;

(2) The right to inform the administering agency about a housing provider's alleged violation of this article;

(3) The right to cooperate with the administering or enforcing agencies or other persons in the investigation or prosecution of any alleged violation of this article; or

(4) The right to inform any person of his or her rights under this article.

(c) Protections of this Section shall apply to any person who mistakenly but in good faith alleges violations of this article.

(d) Taking adverse action against a person within 90 calendar days of the exercise of one or more of the rights described in this Section shall create a rebuttable presumption in the administering agency's investigation that such adverse action was taken in retaliation for the exercise of those rights.

**Sec. 26-5-11. Community Outreach.**

(a) The administering agency, in consultation with the Mayor's Office, may establish a community-based outreach program to conduct education and outreach to applicants and potential applicants for housing regarding rights and procedures under this article. The program may be targeted at individuals or communities where, in the judgment of the administering agency, the need for education and outreach is greatest.

(b) In establishing an outreach program pursuant to Subsection (a) of this Section, the administering agency may partner with community-based organizations. Nothing in this Section shall preclude the administering agency, by contract or grant, and consistent with other provisions of local laws, from engaging the services of such organizations in establishing such community-based outreach programs, participating in such programs, or developing materials for such programs. Nothing in this Section shall preclude the administering agency from combining the outreach programs required by Subsection (a) of this Section with other related community outreach programs.

**Sec. 26-5-12. Confidentiality.**

The City shall keep confidential, to the extent permitted by applicable laws, any

identifying information or other data pertaining to an applicant's criminal history.

**Sec. 26-5-13. Implementation and enforcement; penalties.**

(a) The administering agency shall investigate complaints regarding a housing provider's alleged violation of this article. The administrative agency may engage third party assistance to conduct its investigation.

(1) Where the Director of the administering agency determines that a violation has not occurred, he or she shall issue a determination that a housing provider is not in violation of this article. This determination shall be provided to the housing provider and the complainant.

(2) Where the Director of the administering agency determines that a violation has occurred, he or she shall issue a determination that a housing provider is in violation of this article; provided, however, for a first violation, or for any violation during the first twelve months following the operative date of this article, the Director must issue warnings and notices to correct, and offer the housing provider technical assistance on how to comply with the requirements of this article. For a second violation, the administering agency shall refer its determination for each applicant as to whom the violation occurred or is continuing to the enforcing agency for action, to the housing provider and the complainant.

(3) Where the Director of the administering agency determines that a violation has occurred, he or she shall forward a copy of the determination to the State of Michigan Department of Civil Rights for consideration.

(b) The administering agency, in consultation with the Mayor's Office, is authorized to take appropriate steps to assist in the enforcement of this article, including the investigation of any possible violations of this article. The administering or enforcing agencies shall not find a violation based on a housing provider's decision that an applicant's conviction history is directly related unless the housing provider failed to conduct the individualized assessment as required under Section 26-5-7.

(c) If multiple applicants are impacted by the same violation at the same time *e.g.* all applicants for a certain housing unit are asked for their conviction history on the initial application, each violation shall be treated as a separate violation.

(d) In accordance with Section 4i(k) of the Michigan Home Rule Cities Act, being

MCL 117.4i(k), the penalty upon conviction for violation of this article shall be imprisonment for not more than 90 days or a fine of not more than \$500.00, or both, for each such violation, in the discretion of the court.

(e) An applicant or potential applicant may report to the administering agency any suspected violation of this article within 60 calendar days of the date the suspected violation occurred. The City shall encourage reporting pursuant to this Subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the applicant or potential applicant reporting the violation; provided, however, that with the authorization of such person, the City may disclose his or her name and identifying information as necessary to enforce this article or for other appropriate purposes, which shall include enabling the housing provider to respond to the alleged violation as part of an investigation by the administering agency.

**Sec. 26-5-14. Implementation and enforcement; administrative rules and annual reporting requirements.**

(a) Within 120 calendar days after the effective date of the ordinance that added this article, the administering agency shall promulgate administrative rules pursuant to Section 2-111 of the Charter. These rules shall include, at minimum, procedures for the following:

(1) Preparing standardized language for the notice in Sec. 26-5-8(c) that housing providers may use to satisfy the requirements of that Subsection.

(2) Timeframe and process, including notification, for the following:

(i) To housing providers that a complaint has been filed alleging violation of this article and that an investigation will occur;

(ii) Provide the housing provider a right to respond to the allegations in the complaint;

(iii) To obtain verification from the City of Detroit Buildings, Safety Engineering and Environmental Department that the eligible housing is in compliance with the registration of residential rental properties in accordance with Section 9-1-82 of this Code;

(iv) To obtain verification from the City of Detroit Buildings, Safety Engineering and Environmental Department that the eligible housing has a valid certificate of compliance required by Michigan law, Section 9-1-36 of this Code, or by other provision of this Code;

(v) Receipt and consideration by the administering agency of any response and supporting information from a housing provider regarding the alleged violation; and

(vi) Dissemination of the administering agency's determination of whether an alleged violation in the complaint was substantiated to the housing provider and complainant. If a violation is substantiated, dissemination to the enforcing agency and State of Michigan Department of Civil Rights.

(b) The administering and enforcing agencies shall prepare and jointly submit an annual report to the Mayor and City Council that includes, at a minimum, the following information for the preceding year:

(1) The number and types of complaints it received alleging violations of this article;

(2) The number and types of violations of this article represented by the number of determinations issued by the Director of the administering agency substantiating the alleged violations;

(3) The number and types of violations of this article represented by the number of determinations issued by the Director of the administering agency where the allegations of violations of this article were unsubstantiated;

(4) The number and types of determinations forwarded to the State of Michigan Department of Civil Rights;

(5) The number and types of tickets issued by the enforcing agency;

(6) Data regarding the outcome of tickets issued in court itemizing the number of dismissals, convictions or plea arrangements, including the penalties assessed; and

(7) The costs associated with the implementation and administration of this article.

**Sec. 26-5-15—26-5-20. Reserved.**

**Section 2.** This ordinance is hereby declared necessary to preserve the public peace, health, safety, and welfare of the People of the City of Detroit.

**Section 3.** All ordinances, or parts of ordinances, that conflict with this ordinance are repealed.

**Section 4.** This ordinance shall become effective six (6) months after publication in accordance with paragraph 3 of Section 4-118 of the 2012 Detroit City Charter.

(J.C.C. Page	)	January 15, 2019
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JANICE M. WINFREY  
City Clerk

