



## Kriss Worthington

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### ACTION/CONSENT CALENDAR

October 30, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington, [Mayor Jesse Arreguin](#)  
Subject: Referral to City Manager to look into establishing a Berkeley Fair Chance Ordinance, Banning the Box in Housing and Renting to Mitigate Discrimination Against Formerly Incarcerated People

#### RECOMMENDATION:

Referral to the City Manager [\[and 4x4 Committee\]](#) to look into banning the box for housing and rental units

- I. Preclude housing providers from taking adverse actions against tenants who were formerly incarcerated.
- II. Allow a tenant to submit a complaint to the proper City agency if a tenant suspects that their landlord has violated this ordinance.
- III. Impose appropriate and proportionate penalties on housing providers that violate the ordinance.

#### BACKGROUND:

Housing discrimination against people impacted by the criminal justice system is legalized in Berkeley and throughout the vast majority of the country. This has myriad negative effects for formerly incarcerated individuals; for instance, lack of access to stable housing can increase rates of recidivism, reinforcing the cyclic nature of the criminal justice system. This past year, Berkeley community members have reported housing applications denied on the basis of prior interactions with the criminal justice system, and this same scenario has played out an untold number of times.

One measure that some cities have taken to mitigate housing discrimination against those impacted by the criminal justice system is a “Fair Chance Ordinance.” Such ordinances generally preclude some housing providers from taking an “adverse action,” i.e. a retaliatory or discriminatory action, against applicants or tenants on the basis of interactions with the criminal justice system. Several cities in the Bay Area and along the West Coast have implemented Fair Chance Ordinances after receiving input from the community, including Richmond, San Francisco, and Seattle.

San Francisco’s legislation, which appears as a subsection in the Police Code, stipulates that an affordable housing provider cannot require disclosure of, or take an adverse action in response to, a tenant’s “(1)...arrest not leading to a conviction...; (2) [p]articipation in or completion of a diversion or a deferral of judgment program; (3)...[c]onviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative...(4)...[c]onviction 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; (5)...[c]onviction that is more than seven years old, the date of the [c]onviction being the date of sentencing; or (6) [i]nformation pertaining to an offense other than a felony or a misdemeanor, such as an infraction.”

Richmond’s Fair Chance Ordinance largely mirrors San Francisco’s, which was passed more than a year earlier. Richmond’s measure differs in that it establishes distinct enforcement mechanisms for the legislation and prohibits discrimination based on a conviction that is more than two years old.

Seattle’s Fair Chance Ordinance is more wide-ranging in that it applies to all housing providers, whereas legislation in San Francisco and Richmond only applies to affordable housing providers. In addition, Seattle’s legislation provides more comprehensive descriptions of adverse actions and unfair practices that constitute unlawful discrimination against those impacted by the criminal justice system.

Seattle’s legislation defines an adverse action as “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 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 [based on an unfair practice].” While any of these models, or a combination thereof, would likely reduce housing discrimination against formerly incarcerated tenants, Seattle’s legislation goes furthest to protect tenants’ rights.

For more information:

1. Richmond’s Ordinance No. 20-16 N.S. “Fair Chance Access to Affordable Housing”  
<http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/7690>
2. Section 4906 of Article 49 of the San Francisco Police Code  
[http://sf-hrc.org/sites/default/files/ARTICLE%2049\\_%20Final.pdf](http://sf-hrc.org/sites/default/files/ARTICLE%2049_%20Final.pdf)
3. Seattle’s Ordinance 125393, adding a Fair Chance Housing chapter to the code  
<http://seattle.legistar.com/View.ashx?M=F&ID=5387389&GUID=6AA5DDAE-8BAE-4444-8C17-62C2B3533CA3>
4. A report on housing as a barrier to reentry by the Urban Institute  
<https://www.urban.org/sites/default/files/publication/25321/412552-Housing-as-a-Platform-for-Formerly-Incarcerated-Persons.PDF>
5. A report that includes background on Oakland’s policy of “allow[ing] people with convictions whose [rental] applications had been denied to appeal decisions by presenting ‘mitigating circumstances’” by Californians for Safety and Justice  
[https://safeandjust.org/wp-content/uploads/CSJ\\_SecondChances.pdf](https://safeandjust.org/wp-content/uploads/CSJ_SecondChances.pdf)

FINANCIAL IMPLICATIONS: Minimal

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

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Attachments: None