

# Fair Chance Housing Update

GREAT NEIGHBORHOODS COMMITTEE

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## Briefing Objectives

- ◀Committee Direction
- ◀Background
  - Charlotte Fair Housing Ordinance
  - HUD Guidance
  - Reentry Housing Alliance Request
- ◀Research
- ◀Landlord Survey
- ◀Path Forward

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## Committee Direction

- ◀ At the November 2020 Great Neighborhoods Committee meeting, the Committee approved the following path forward in examining Fair Chance Housing:
  - Survey Landlords and gather other data to determine current practices and scope of the problem locally
  - Develop and enhance education opportunities for landlords and people exiting prison, court system, etc.
  - Consider additional recommendations

## Background - Charlotte Fair Housing Ordinance Background

- ◀ The City's current Fair Housing ordinance secures protections for all persons within the city from discrimination based on **race, religion, color, sex, national origin, familial status and disability**, in all housing related transactions
- ◀ 30 to 40 complaints are investigated annually with race, disability, and familial status being the most frequent
- ◀ **In the last five years, one case has been received for potential discrimination based on criminal background**

## Background - Charlotte Fair Housing Ordinance Background

- ◀ Rental applicants are guaranteed the right to file a complaint if they believe there has been discrimination because of a criminal record
- ◀ The Community Relations Committee has been appointed as the administering body to investigate and enforce all renter complaints related to the regulations in the City's ordinance

## Background - HUD Guidance

- ◀ In 2016, HUD issued guidance for landlords related to the use of criminal records in housing rental transactions
- ◀ Intended to end the practice of landlords denying applicants based on a criminal record when the denial might violate the Fair Housing Act
- ◀ Applies to all landlords

# Background - Reentry Housing Alliance Request

## <Phase One

- Increase landlord and tenant education and awareness of:
  - Current protections afforded by the Fair Housing Ordinance and HUD Guidelines (tenants and landlords)
  - Right to file a complaint (tenants)
  - Use of criminal backgrounds in decision-making (landlords)
  - Continue investigating complaints as they increase due to increased education and awareness

## <Phase Two

- Amend the Fair Housing Ordinance to add protections to people with criminal backgrounds if Phase I does not result in improved landlord compliance and increased housing opportunities

# Research - North Carolina

City/Avg. Rent	Fair Chance?	Incentives	Other
Durham	No	• None	• One case in the last five years
Raleigh	No	• None	• Referrals made to the Wake County Local Reentry Council who provide case management • Use Permanent Supportive Housing Vouchers to support justice involved tenants
Asheville	No	• None	• None
Winston Salem	No	• None	• None
Greensboro	No	• None	• Local fair housing office investigated two cases in the last three years • Thrive GSO, a City-sponsored hub for advocating for and providing referrals to justice involved clients

## Research – (National) Programs

◁ Across the country, various programs have been created to provide housing options for people with criminal history. Examples include:

Location	Incentive	Home Rule?
Ohio	<ul style="list-style-type: none"> <li>• <b>Returning Home</b> - a program offering permanent housing with supportive services to returning prisoners with certain medical needs and who are at risk of homelessness</li> </ul>	Yes
Vermont	<ul style="list-style-type: none"> <li>• Authority partners with the state's Department of Corrections to help former prisoners find housing through the <b>Offender Re-Entry Housing Program</b></li> </ul>	No
Illinois	<ul style="list-style-type: none"> <li>• The <b>RHS Re-Entry Demonstration Program</b> will provide rental assistance for individuals exiting the State prison system</li> </ul>	Yes
Greensboro, NC	<ul style="list-style-type: none"> <li>• <b>Thrive GSO</b> is a City-sponsored hub for advocating issues surrounding criminal records and provide services and referrals for expunction, housing, employment, voting and education</li> </ul>	No

## Research – (National) Programs

◁ Housing Authorities have developed targeted policies and programs:

Location	Incentive
New Orleans LA	<ul style="list-style-type: none"> <li>• Removed policy to screen potential tenants with criminal records; instead creates a process in which each person's case is reviewed individually</li> </ul>
King County WA	<ul style="list-style-type: none"> <li>• Provides project-based HCV vouchers for a 46-unit transitional housing development. Participants can stay 18-24 months, and can transition to conventional public housing without additional screening</li> </ul>
Burlington VT	<ul style="list-style-type: none"> <li>• Provides a housing specialist to assist parolees with locating private or subsidized housing; can recommend that a parolee joining family members on an existing HCV despite his/her criminal record</li> </ul>
Portland OR	<ul style="list-style-type: none"> <li>• Offers up to 18 months of rental assistance to formerly incarcerated individuals; participants can use funds for transitional to permanent housing</li> </ul>
New York NY	<ul style="list-style-type: none"> <li>• Pilot program to reunite formerly incarcerated people with their families in public housing; goal is to add them to their family's public housing lease</li> </ul>
Cuyahoga NY	<ul style="list-style-type: none"> <li>• Reserves two floors of public housing for men 18+ recently released from prison and with substance abuse issues; participants can stay for up to 18 months (operated by YMCA)</li> </ul>
Baltimore MD	<ul style="list-style-type: none"> <li>• Sets aside 200 tenant-based HCVS for participants who are chronically homeless and enrolled in the Ex-Offender Program, a work-first job training and placement program</li> </ul>

# Research – National (Cities)

City	Fair Chance?	Home Rule?	Current Status
Austin, TX	No	Yes	Austin enforces based on race; no cases that have warranted enforcement
Columbus, OH	No	Yes	Additional classes but not criminal background
Dallas, TX	No	Yes	All protected classes under Fair Housing Act
Denver, CO	No	Yes	Additional classes but not criminal background
Fort Worth, TX	No	Yes	All protected classes under Fair Housing Act
Houston, TX	No	Yes	Texas law HB 1510 "Encourages" looking beyond criminal record and informing applicants of landlord's policies
Indianapolis, IN	No	Yes	Age, sexual orientation, military status are protected
Nashville, TN	No	Yes	All protected classes under Fair Housing Act
Seattle, WA	Yes	Yes	Added protected class in Fair Housing Ordinance (2017)
Detroit, MI	Yes	Yes	Adopted policy (2018) that prevents landlords with 5+ units from asking potential renters about their criminal background until the landlord has determined that the candidate is qualified to rent under all other phases of the application process

# Research – Criminal Background Litigation

- Legislative repeal
  - *Wisconsin (2011)*: State legislature passed a bill specifically repealing existing local ordinances and preempting localities from enacting any ordinances that limit rental property owners from considering certain types of information, including criminal background, in the tenant screening process
- Very few reported cases
  - *Minnesota (home rule)*: In September of 2019 Minneapolis adopted a fair chance ordinance. In September 2020, 43 landlords sought a preliminary injunction that would prevent Minneapolis from enforcing it. The Court denied the injunction and the landlords appealed on December 1, 2020
  - *Washington (home rule)*: Seattle adopted a fair chance ordinance which was challenged by a Seattle landlord in 2018. A federal court sent it to state court in February of 2019 who invalidated the ordinance. Seattle appealed and the state appeals court sent it back to the trial court for reconsideration
- Of the reported court cases most were brought under the FHA using a disparate impact analysis, not a challenge to an ordinance

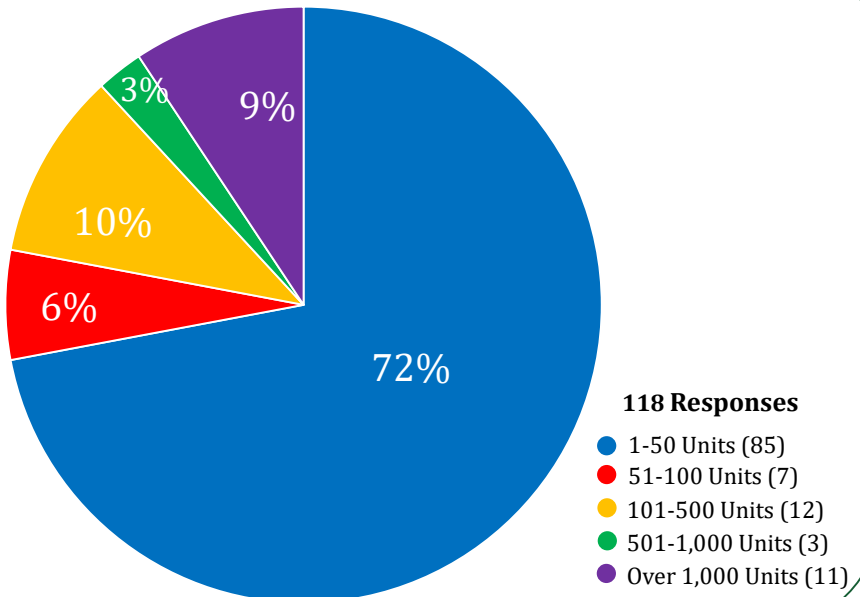
# Who we surveyed

Source	Number	Notes
Emergency Rental Assistance Program (ERAP)	343	• Landlords that have received City funds for ERAP on behalf of their tenants, AND that provided email addresses
Socialserve	4,467	• Mecklenburg County users of Socialserve.com.
Greater Charlotte Apartment Association	134	• GCAA Owner management company members, including small and large companies
<b>TOTAL</b>	<b>4,944</b>	

# Local Landlord Survey - Questions

1. What is the size of your rental real estate portfolio?
2. Does your portfolio primarily consist of single-family or multi-family developments?
3. Do you rent to people with criminal records?
4. Are you familiar with HUD's 2016 guidance for landlords when considering criminal backgrounds as part of the applicant screening process?
5. What is your evaluation criteria/requirements when renting to people with criminal records?
6. What criminal records do you not accept?
7. What do you believe are the benefits and challenges of:
  - Deferring inquiry into criminal convictions until after rental applicants have qualified, and
  - Allowing applicants to provide evidence of reporting errors, rehabilitation and/or other mitigating factors related to convictions

## What is the size of your rental real estate portfolio?

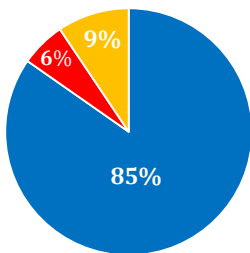


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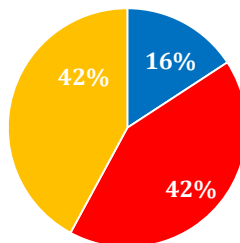
## Does your portfolio primarily consist of single-family or multi-family developments?

**1-50 Units (85)**



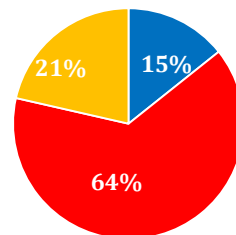
- Single-family (72)
- Multi-family (5)
- Both (8)

**51-500 Units (19)**



- Single-family (3)
- Multi-family (8)
- Both (8)

**Over 500 Units (14)**



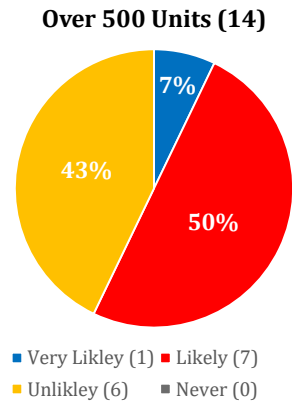
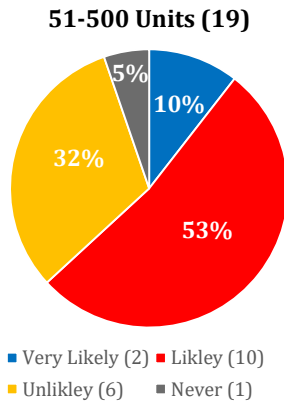
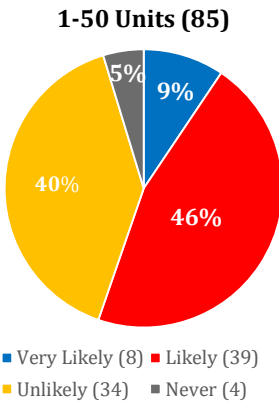
- Single-family (2)
- Multi-family (9)
- Both (3)

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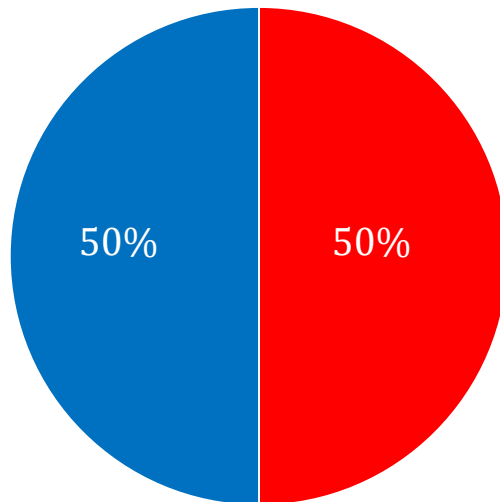
## Do you rent to people with criminal records?



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## Are you aware of HUDs 2016 Guidance?



**118 Responses**

- Yes (61)
- No (61)

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## What is your evaluation criteria when renting to people with criminal records?

- ◀ Depends on nature of crime and time that has elapsed
- ◀ Honesty about criminal background; preference that applicants be transparent about what will be found before the background check is requested
- ◀ Special attention paid to felony convictions, drug convictions and violent crimes
- ◀ No history of sexual/violent crimes, drug related crimes or misdemeanors
- ◀ Criminal backgrounds are only one element; applicant must also have a good credit score, established work history, and good rental references

## What criminal record offences do you NOT accept?

- ◀ Sexual crimes / sex offender
- ◀ Crimes against children
- ◀ Drug-related and violent offences
- ◀ History indicating habitual crimes

## What do you believe are the benefits and challenges of deferring inquiry into criminal convictions until after rental applicants have qualified?

### BENEFITS

- ◀ Benefits people who have served their time by giving them a second chance
- ◀ Benefits landlords who may realize that many formerly incarcerated people are now currently honorably employed
- ◀ It's fair to judge first on credit and rental history and not on background

## What do you believe are the benefits and challenges of deferring inquiry into criminal convictions until after rental applicants have qualified?

### CHALLENGES

- ◀ Industry practice includes background checks that include credit, criminal and eviction checks in one package for one price
- ◀ Proposal perceived as taking away rights (right to make business decision and choose tenants; restriction of freedoms) and increasing landlord liability
- ◀ Wastes both the landlord's and the tenant's time; risk of losing a qualified tenant during the time it takes to do a two-step process only to learn a tenant does not qualify; delays move-in times which impacts the business
- ◀ May increase costs to applicants
- ◀ Applicants are familiar with reviewing criminal records as part of the approval process; could cause confusion for applicants who pass the initial application stage, only to then learn they are not eligible
- ◀ Concern about the impact on small landlords
- ◀ Proposal is a replication of the HUD guidance

**What do you believe are the benefits and challenges of allowing applicants to provide evidence of reporting errors, rehabilitation and/or mitigating factors to convictions?**

**BENEFITS**

- ◀A great way to give someone a second chance
- ◀May help the landlords see that the prospective tenant is really trying
- ◀Opportunity for applicant to advocate for themselves
- ◀Any prospective tenant willing to do this will probably be a good resident
- ◀This is fair and reasonable

**What do you believe are the benefits and challenges of allowing applicants to provide evidence of reporting errors, rehabilitation and/or mitigating factors to convictions?**

**CHALLENGES**

- ◀If the City wants to help applicants, they should provide financial guarantees to the landlords, and provide a faster/easier/cheaper way to evict bad tenants
- ◀Determining what previous criminal offenses and mitigating factors are acceptable
- ◀Property managers are not educated to make these decisions; decisions may be subjective
- ◀It's onerous to pass laws that shift the burden onto a landlord without the City taking on some of the responsibilities, like helping to vet tenants with criminal histories

# Rental Organizations

## ◀ Greater Charlotte Apartment Association

- Has met with Reentry Housing Alliance
- Landlords do not have a good understanding of HUD Guidelines; education is needed for both landlords and applicants
- Landlords should not be responsible for determining whether or not an applicant is reformed
- Landlords should do a better job informing applicants of disqualifying backgrounds
- Applicants should be proactive by asking landlords what criminal background would disqualify an applicant, and being up-front with the landlord about their criminal background

# Affordable Housing Developers

- ◀ Property management companies overseeing HTF awarded affordable developments are well versed on HUD guidelines, and follow them
- ◀ Affordable housing developers are accustomed to heavy regulatory oversight and make it a priority to remain abreast of fair housing guidelines
- ◀ Affordable housing developers are familiar with the challenges that people with criminal backgrounds have in obtaining quality affordable housing, therefore they partner with organizations that assist those individuals

## Path Forward

1. Continue investigating complaints as they are received
2. Continue updating education and outreach material to incorporate fair chance housing best practices and implementing locally
  - Fair Housing Month
  - Translation into other languages
  - Tenant's Rights materials
  - Leverage international organizations for outreach
3. Expand existing and create new partnerships (Reentry Housing Alliance, Exodus Foundation, Sherriff's Department, CMPD, GCAA, etc.) to:
  - Increase landlord education
  - Increase tenant awareness, as well as awareness of those currently incarcerated
4. Identify magnitude of the problem (e.g. outcomes of increased education to individuals exiting incarceration and landlords)

## Path Forward (continued)

5. Work with North Carolina's Task Force for Racial Equity in Criminal Justice to advocate for amendments to state Landlord-Tenant laws
6. Continue researching other states for best practices
7. Monitor evolving changes at the Federal level
8. Provide periodic updates to the Committee