

# Reentry Housing

FAIR HOUSING FOR PEOPLE WITH CRIMINAL RECORDS

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## Briefing Objectives

- ▶ Reentry Housing Background
- ▶ Fair Housing Ordinances
- ▶ 2016 HUD Guidance
- ▶ Reentry Housing Alliance Request
- ▶ Next Steps

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## Background

- ▶ Criminal backgrounds negatively impact housing stability, and often follow people for a lifetime
- ▶ There are multiple groups in our community who advocate for removal of barriers that prevent people with criminal records from getting housing and getting their lives back on track
- ▶ The Reentry Housing Alliance Research:
  - NC prison population grew by 134% over last 38 years
  - 3,388 people released in 2019 from incarceration in the Charlotte metro area
  - 12,506 people in NC are currently on post release or parole
  - 70,202 in NC are currently on probation
  - 70% of households assisted by HousingCLT have an adult with a record
  - 8% of urban and suburban adult population have a felony record – equates to 55,000 people in Charlotte-Mecklenburg
- ▶ The Housing Recovery Task Force and Community Relations Committee (CRC) recommended that reentry fair housing issues be explored to help remove barriers to housing for people with criminal records
  - The CRC supported the Reentry Housing Alliance request for an amendment to Charlotte's fair housing ordinance.

## Charlotte Mecklenburg Fair Housing Ordinances

- ▶ The City and County Fair Housing Ordinances have been administered by the staff of CRC since 1980
  - 30 to 40 investigations annually (race, disability or familial status most frequent cases)
- ▶ Both ordinances have been certified as being substantially equivalent to the Federal Fair Housing Act
- ▶ Originally, the ordinances prohibited housing discrimination based on race, sex, religion, national origin and color
- ▶ In 1988 the ordinances were amended to include familial status and disability as protected classes – this required enabling legislation from the State

## 2016 HUD Guidance

- ▶ In 2016, HUD issued “Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” guidance.
- ▶ 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, not just those who are HUD subsidized.

## 2016 HUD Guidance

- ▶ **Landlord policy to use criminal records as part of their screening process:**
  - Criteria must be narrowly tailored.
  - Still needs to prove that this “tailored” policy is necessary to serve a “substantial, legitimate, nondiscriminatory interest.”
  - Must be able to show that its “tailored” use of criminal background checks “*accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.*”
- ▶ **Can Landlords take into account the criminal background of applicants as part of their screening criteria without violating fair housing laws?**
  - HUD Guidance provides a “safe harbor” for landlords: If a landlord uses criminal background checks and only excludes applicants who have been convicted of the illegal manufacture or distribution of a controlled substance.
  - The Fair Housing Act specifically states that landlords do not have to make housing available to persons with such a conviction.
- ▶ **Other than the safe harbor addressed above, the HUD memo does not specify what types of criminal convictions would warrant a denial to rent**

## 2016 HUD Guidance

► **General guidelines which landlords must consider if they choose to go beyond denial of applicants convicted of illegal manufacture or distribution of controlled substances:**

- Landlords should not deny housing based on an arrest alone, as arrests without convictions do not justify the denial.
- Convictions should be considered on a case-by-case basis, in light of mitigating factors, such as the person's age at the time a crime was committed, evidence of good behavior since the crime was committed, how long ago the conviction occurred, and the nature and severity of the crime committed.
- HUD recommends that Landlords conduct an "individualized assessment" of each applicant, considering "relevant mitigating information" such as; (1) the facts or circumstances surrounding the criminal conduct; (2) the age of the individual at the time the conduct occurred; (3) evidence that the individual has maintained a good tenant history before and after the conviction or conduct; (4) and evidence of rehabilitation efforts.

► **Landlords will still bear the burden of proving that any discriminatory effect caused by such a tailored policy or practice [involving the use of criminal background checks] is justified**

## 2016 HUD Guidance

- Based on this guidance from HUD, the only sure way a Landlord can avoid fair housing liability if he/she wants to consider an applicant's criminal history is to limit the policy to exclude only applicants with prior convictions for illegal manufacture or distribution of controlled substances.
- If a landlord wants to deny an applicant for any other convictions, the landlord must be able to prove that the particular policy is necessary in order to achieve a substantial, legitimate, non-discriminatory interest, and that there is no less discriminatory way to achieve this interest.

# Reentry Housing Alliance Request

- ▶ A Fair Housing Ordinance, or amendment to the current ordinance, with the following language and protections:
  1. Rental housing providers shall defer any inquiry into criminal convictions of applicants and their household members until after the applicant is qualified.
  2. Rental housing providers who deny an applicant based on their criminal history, shall allow the applicant to provide evidence of reporting errors, rehabilitation and/or other mitigating factors related to convictions that would show they are a good candidate despite their records.
  3. A rental applicant shall be guaranteed the right to file a complaint if they believe there has been discrimination because of a criminal record.
  4. Appoint or create an administering body to investigate and enforce all renter complaints related to the regulations in the City's ordinance.
  5. Direct that rental housing providers shall post and/or list in writing a description of those matters identified by the ordinance that may be considered by the landlord as basis for adverse action, including criminal convictions and years since conviction date.

# Next Steps

- ▶ 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.
- ▶ Bring back recommendations to the Great Neighborhoods Committee meeting for consideration

# Questions