



Office of the City Manager

CONSENT CALENDAR
November 30, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Paul Buddenhagen, Deputy City Manager
 Subject: MOU to implement Ronald V. Dellums Fair Chance Access to Housing Ordinance

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to effectuate a Memorandum of Understanding (MOU) between the City of Berkeley and the City of Berkeley Rent Stabilization Board (Rent Board) to implement the Ronald V. Dellums Fair Chance Ordinance previously adopted by the Berkeley City Council.

FISCAL IMPACTS OF RECOMMENDATION

The Berkeley City Council, through the June 2021 budget adoption, allocated \$115,850 of General Fund for the Rent Board to implement the Fair Chance Ordinance. This is a new body of work and the Rent Board has developed a line item budget to implement the ordinance. The Rent Board will bill the city on a quarterly basis for actual costs expended.

CURRENT SITUATION AND ITS EFFECTS

For the fiscal year 2022 budget, the City Council approved \$115,850 for the Rent Board to leverage its existing programs and services to implement the Fair Chance Ordinance. The implementation work is codified in the attached MOU which is before council for approval. Additionally, a contract for \$30,000 with Just Cities was established to support implementation of the Fair Chance ordinance through the development of information and reporting materials, outreach and educational activities, and audit and compliance testing. This work has begun.

BACKGROUND

On October 30, 2018 the Berkeley City Council approved a council referral to the City Manager and the 4x4 Committee to look into precluding housing providers from taking adverse actions against tenants who were formerly incarcerated, allowing tenants who suspected their landlords violated the ordinance to submit complaints to a city agency, and imposing penalties on providers in violation.

Throughout 2019, the Alameda County Fair Chance Housing Coalition, led by Just Cities/the Dellums Institute for Social Justice, met with stakeholders in Berkeley and

proposed the Fair Chance Housing Ordinance to: (1) increase access to housing for formerly incarcerated individuals and their family members; (2) reduce homelessness and family separation that result from blanket exclusion for housing applicants based solely on criminal background checks; (3) reduce recidivism by removing structural barriers to stable housing; (4) provide formerly incarcerated people with a fair opportunity to reclaim their lives and effectively reintegrate into the Berkeley community and (5) maintain existing safeguards for owners. The prospective ordinance was discussed at several city policy committee meetings and then brought to the Berkeley city council on March 10, 2020 where a first reading was approved. The next two city council meetings were canceled because of the Covid-19 crisis. The Ordinance was adopted by the City Council on April 14, 2020.

The Fair Chance Ordinance prohibits housing providers from advertising, directly or indirectly, that they will not consider applicants with criminal histories except as required by state or federal law. It also prohibits housing providers from inquiring about an applicant's criminal history, requiring an applicant to disclose their criminal history or authorize the release of their criminal history, or, if the housing provider receives that information, to take adverse action based on it. The Ordinance does not prohibit housing providers from complying with state or federal laws that require them to automatically exclude tenants based on certain types of criminal history so long as the provider has fulfilled their obligations under the Ordinance. The ordinance does not apply to single family homes, single family homes with ADUs or duplexes and triplexes where an owner occupies a unit on the property as their primary residence.

In passing the ordinance on April 14, 2020, the City Council directed the City Manager to take all necessary steps to implement the ordinance, including but not limited to developing administrative regulations in consultation with all relevant City Departments including the Rent Stabilization Board, preparing an annual implementation budget, designating hearing officers and other necessary staffing for administrative complaint, exploring the development of a compliance testing program similar to that used by the Seattle Office of Civil Rights, developing timelines and procedures for complaints, conducting outreach and education in partnership with the Alameda County Fair Chance Housing Coalition, and referring program costs to the June budget process

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

N/A

RATIONALE FOR RECOMMENDATION

The Ronald V. Dellums Fair Chance Access to Housing Ordinance ("Fair Chance Ordinance," B.M.C. Chapter 13.106) creates rights and obligations for tenants and landlords in Berkeley, including the right to file an administrative complaint about an alleged violation and the right to an administrative hearing before a hearing officer. The Rent Board conducts administrative hearings arising from petitions filed by tenants and

landlords to exercise rights set forth in the Rent Ordinance. Additionally, the Rent Board operates a robust public information program that routinely advises tenants and landlords regarding a broad array of state and local laws that directly pertain to rent stabilization and eviction for good cause.

In the interest of efficient delivery of services to the public, the City intends to delegate authority for the implementation of the Fair Chance Ordinance to the Rent Board, so that its existing systems can be leveraged to provide services to tenants and landlords.

ALTERNATIVE ACTIONS CONSIDERED

Considered having the Health, Housing and Community Services Department administer, but Rent Board is much more aligned with the work needed.

CONTACT PERSON

Paul Buddenhagen, Deputy City Manager, City Manager's Office, (510) 981-7005

Attachments:

1: Resolution

Exhibit A: Memorandum of Understanding of Fair Chance Ordinance Implementation

RESOLUTION NO. ##,###-N.S.

MEMORANDUM OF UNDERSTANDING OF FAIR CHANCE ORDINANCE IMPLEMENTATION BETWEEN RENT STABILIZATION BOARD AND CITY OF BERKELEY

WHEREAS, On October 30, 2018 the Berkeley City Council approved a council referral to the City Manager and the 4x4 Committee to look into precluding housing providers from taking adverse actions against tenants who were formerly incarcerated, allowing tenants who suspected their landlords violated the ordinance to submit complaints to a city agency, and imposing penalties on providers in violation; and

WHEREAS, the prospective ordinance was discussed at several city policy committee meetings and then brought to the Berkeley city council on March 10, 2020 where a first reading was approved and the Ordinance was adopted by the City Council on April 14, 2020; and

WHEREAS, in passing the ordinance on April 14, 2020, the City Council directed the City Manager to take all necessary steps to implement the ordinance, including but not limited to developing administrative regulations in consultation with all relevant City Departments including the Rent Stabilization Board; and

WHEREAS, the Berkeley City Council, through the June 2021 budget adoption, allocated \$115,850 of General Fund for the Rent Board to implement the Fair Chance Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that in the interest of efficient delivery of services to the public, the Rent Board is delegated authority for the implementation of the Ronald V. Dellums Fair Chance Access to Housing Ordinance per the attached Memorandum of Understanding of Fair Chance Ordinance Implementation.

BE IT FURTHER RESOLVED that the City of Berkeley will pay the Rent Board up to \$115,850 for actual costs incurred to implement the MOU of Fair Chance Ordinance.

Exhibits

A: Memorandum of Understanding of Fair Chance Ordinance Implementation

**MEMORANDUM OF UNDERSTANDING OF FAIR CHANCE ORDINANCE
IMPLEMENTATION**

THIS AGREEMENT is made and effective as of July 1, 2021, by and between the Berkeley Rent Stabilization Board, a quasi-independent municipal agency (“Rent Board”), and the City of Berkeley, a California municipal corporation (“City”). In consideration of the mutual covenants, conditions and undertakings set forth herein, the parties agree as follows:

1. Recitals. This Agreement is made with respect to the following facts and purposes which each of the parties acknowledge and agree are true and correct:

A. The Rent Board is organized as a department of the City but operates under the independent direction and authority of a board of elected commissioners. The Rent Board is charged with implementation of the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76), the purpose of which is to “regulate residential rent increases in the city of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing.” (B.M.C. 13.76.030.) The City Manager and City Council do not have authority to direct the work of Rent Board staff.

B. The Ronald V. Dellums Fair Chance Access to Housing Ordinance (“Fair Chance Ordinance,” B.M.C. Chapter 13.106) creates rights and obligations for tenants and landlords in Berkeley, including the right to file an administrative complaint about an alleged violation and the right to an administrative hearing before a hearing officer.

C. The Rent Board already operates a robust public information program that routinely advises tenants and landlords regarding a broad array of state and local laws that directly pertain to rent stabilization and eviction for good cause.

D. The Rent Board also conducts administrative hearings arising from petitions filed by tenants and landlords to exercise rights set forth in the Rent Ordinance.

E. In the interest of efficient delivery of services to the public, the City intends to delegate authority for the implementation of the Fair Chance Ordinance to the Rent Board, so that its existing programs can be leveraged to provide services to tenants and landlords as set forth below.

F. Under the City Charter, the “Board is also empowered to request and receive funding, when and if necessary, from the City of Berkeley and/or any other available source for its reasonable and necessary expenses.” (Charter, Section 123(3)).

G. In consideration of the Rent Board’s agreement to implement the Fair Chance Ordinance and the resulting benefits to tenants and landlords in Berkeley, the City has provided a grant to cover costs incurred by the Rent Board as described in this Agreement.

2. Grant. On June 29, 2021 The City Council approved an allocation of \$115,850 to the Rent Board for Fiscal Year 2021-2022 subject to the provisions of this Agreement (“Grant Funds”). Any funds not used in accordance with Paragraph 3, below, shall be returned to the City at the end of the Term of this MOU. In the event that these funds are inadequate to provide the services detailed below, the Rent Board may seek an additional funding allocation from the City Council.

3. Use of Grant Funds.

Recipient shall use the Grant funds to support the implementation of the Fair Chance Ordinance and for no other purposes during the term of this agreement. Implementation includes the following:

The administrative start-up costs include staff time that has been spent and will continue to be spent on the following as the Fair Chance Ordinance is implemented:

- Communication with Just Cities, HHCS, City Attorney's Office, Mayor's Office
- Drafting Administrative Regulations with the City Attorney's Office
- Internal agency training of counselors
- Development of training materials
- Outreach to the public regarding the Ordinance

It also includes costs associated with modifying the Rent Board's existing database and database that is currently in development to allow staff to track Fair Chance-related work for both internal and external reporting purposes.

Estimated (non-binding) staff time as follows:

- Housing Counselors (approx. 10 hours/week) will counsel current Berkeley tenants and landlords, help prepare tenants denied housing and landlords for administrative determinations and full evidentiary hearings, and conduct ongoing outreach to Berkeley tenants and landlords.
- Public Information Unit Supervisor (approx. 2 hours/week) will oversee the housing counselors, communicate and coordinate with Just Cities on their outreach to prospective tenants, compile data from the database, and provide annual data to Just Cities for the required report.
- Staff Attorney (approx. 4 hours/week) will provide ongoing guidance to housing counselors and conduct administrative determinations.
- Hearing Examiner (approx. 4 hours/week) will conduct full evidentiary hearings as specified in the Ordinance and Administrative Regulations.

4. Term. This Agreement shall commence on July 1, 2021 and shall remain and continue in effect until June 30, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

5. Assignment. Rent Board shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City Manager.

6. Administrative Citations. The Rent Board is hereby designated the authority to issue administrative citations for the limited purpose of the Fair Chance Ordinance. Administrative

citations shall not be issued except where expressly authorized by a decision of a hearing examiner pursuant the administrative hearing procedure set forth under the Fair Chance Ordinance. (B.M.C. 13.106.090.) The City shall accept payment of fines directly, and shall conduct hearings appealing the amount of such fines in accordance with applicable administrative regulations.

7. Entire Agreement. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.