

BULLETIN: DETROIT, MICHIGAN

A BRIEF REVIEW OF DETROIT'S FAIR CHANCE ACCESS TO RENTAL HOUSING ORDINANCE AND ITS IMPACT ON TENANT SCREENING

On March 1, 2019, the Detroit City Council published the Fair Chance Access to Rental Housing Ordinance (the "Ordinance")¹, to change the tenant screening process as well as prohibit use of certain criminal screening criteria, effective September 1, 2019. Detroit's Department of Civil Rights, Inclusion and Opportunity ("CRIO") is responsible for enforcement and implementation of the Ordinance through administrative rules to be promulgated by December 30, 2019.²

Update: As of October 1, 2020, CRIO has not published administrative rules for enforcement and implementation of the Ordinance.

THE ORDINANCE CHANGES THE TENANT SCREENING PROCESS AND RESTRICTS USE OF CRIMINAL HISTORY

The Ordinance changes the tenant screening process in several ways. First, housing providers must pre-qualify applicants based on all non-criminal criteria and provide them with a conditional lease agreement, committing the unit provided the applicant passes criminal screening, before considering an applicant's criminal history. Second, the Ordinance prohibits housing providers from basing adverse action on certain types of criminal records, such as arrests that do not lead to convictions, or convictions that are dismissed or expunged. Third, housing providers that choose to take adverse action based on permitted criminal history information must provide the applicant with a copy of the background check report and an opportunity to dispute the accuracy and relevance of the criminal history before taking adverse action. The housing provider must then consider any information provided by the applicant regarding their good conduct or rehabilitation before taking adverse action based on criminal history information.

HOW CAN LANDLORDS EVALUATE THEIR APPLICATION AND SCREENING PROCESSES IN LIGHT OF THE ORDINANCE?

- Customize your screening process to: (1) determine if applicants are otherwise qualified before reviewing criminal history information; (2) provide pre-qualified applicants with conditional lease agreements; and (3) allow applicants with potentially disqualifying criminal history to provide additional information before taking adverse action.
- Work with your screening provider to ensure that the information you receive when screening an applicant does not include the information prohibited by the Ordinance.
- As part of this exercise, consider consulting with your compliance and legal teams about your applicant qualification criteria generally. Except for certain criteria expressly permitted by applicable law, housing providers should have a legitimate business reason for the criteria they apply to prospective applicants.

CONCLUSION

Housing providers are encouraged to work closely with their legal and compliance staff on how to best meet the Ordinance's requirements, and to review the screening products and services they use to ensure these products and services are consistent with the housing provider's obligations under all applicable laws and regulations.

This Brief Review was prepared for general information purposes only, does not constitute legal advice, must not be acted upon as such, and is subject to change without notice. Always consult a lawyer or qualified housing expert for legal or compliance advice.

¹ See Ordinance No. 01-19 (https://library.municode.com/mi/detroit/ordinances/code_of_ordinances?nodeId=1003280). The Ordinance amends Chapter 26 of the 1984 Detroit City Code, Housing, by adding a new Article 5 titled "Fair Chance Access to Rental Housing" which consists of Sections 26-5-1 through 26-5-20.

² See Sec. 26-5-14(a) of Ordinance No. 01-19.