



**Theresa Sparks**  
Executive Director

**Edwin M. Lee**  
Mayor

### **Frequently Asked Questions**

#### **Article 49 “Procedures for Considering Arrests and Convictions and Related Information in Employment and Housing Decisions”**

#### **Also known as the Fair Chance Ordinance (FCO)**

The Fair Chance Ordinance (FCO), codified at Article 49 of the San Francisco Police Code and Chapter 12T of the San Francisco Administrative Code, takes effect on August 13, 2014. The ordinance regulates affordable housing providers’ use of arrest and conviction records of applicants for, or residents in, affordable housing. The Human Rights Commission (HRC) has the authority to implement the housing provisions of the FCO.

These FAQs pertain only to the affordable housing provider requirements and affordable housing provider applicant rights under the FCO. Please contact the Office of Labor Standards and Enforcement at 415-554-5192 or email [fce@sfgov.org](mailto:fce@sfgov.org) regarding questions about the employment provisions of the ordinance.

This document addresses some of the most common questions about the Fair Chance Ordinance. If you have a question not covered by the FAQs, please contact the HRC.

### **PURPOSE AND POLICY**

#### **1) What is the Fair Chance Ordinance?**

The Fair Chance Ordinance (FCO) goes into effect on August 13, 2014 and imposes restrictions on criminal history inquiries on certain employers, affordable housing providers, and City contractors. The FCO's requirements for employers and affordable housing providers are codified in Article 49 of the San Francisco Police Code.

The Office of Labor Standards and Enforcement implements the provisions regarding employment. For information regarding the employer responsibilities and applicant and employee rights the FCO, please contact the OLSE at (415) 554-5192, or visit their website: <http://sfgsa.org/index.aspx?page=6599>

**2) What is the purpose of this ordinance?**

The Fair Chance Ordinance provides people with prior arrest and conviction records the opportunity to be considered for employment and housing on an individual basis, thereby affording them with a fair chance to acquire employment and housing, to effectively reintegrate into the community, and to provide for their families and themselves.

**3) When does the Article 49/The Fair Chance Ordinance go into effect?**

August 13, 2014

**4) Does the ordinance impact existing state and federal laws relating to arrest and conviction records?**

No. Housing providers, employers and contractors must still follow state and federal law regarding criminal background checks. If there is a conflict, state and federal requirements supersede the FCO's requirements. Please note that HRC does not advise on federal or state laws. If you have questions about the applicability of federal or state law, please consult with legal counsel.

## **SCOPE OF AUTHORITY**

**5) Does the Fair Chance Ordinance apply to private housing providers?**

No. The Ordinance applies only to affordable housing providers. Affordable Housing Providers include any residential building in the City that has received funding from the City, connected in whole or in part to restricting rents, the funding being provided either directly or indirectly through funding to another entity that owns, master leases, or develops the building. Affordable Housing also includes "affordable units" in the City as the term is defined in Article 4 of the Planning Code. Projects that are financed using City-issued tax exempt bonds, but that receive no other funding from the City or are not otherwise restricted by the City shall not constitute Affordable Housing.

**6) If an Affordable Housing Provider uses a third party Verification Company to screen applicants who is responsible for compliance- the affordable housing provider or the third party verification company?**

The affordable housing provider. Affordable Housing providers should advise their screening company of the affordable housing provider's requirements under the FCO and ensure the company does not provide information that violates the ordinance. The affordable housing provider is responsible for conducting an individualized assessment for all applicants and tenants and will be required to keep records verifying compliance.

## **AFFORDABLE HOUSING PROVIDERS' NOTICE REQUIREMENTS**

**7) What are the FCO's requirements for unit postings and solicitations?**

Affordable Housing Providers covered by the FCO must include in all advertisements or solicitations, that are reasonably likely to reach persons who are reasonably likely to seek affordable housing in San Francisco, a statement that the housing provider will consider qualified applicants with criminal histories in a manner consistent with the requirements of the FCO. Here's an example of a statement that would satisfy this requirement:

"Pursuant to the San Francisco Fair Chance Ordinance, we will consider for housing qualified applicants with arrest and conviction records."

An affordable housing provider may not disseminate any housing solicitation or advertisement that expresses—directly or indirectly—that any person with an arrest or conviction record will not be considered for housing, or may not apply for housing. As a result, rental ads that state "no felons," or "no criminal history allowed," are not permitted.

Similarly, language in a rental ad such as "a background check must be passed," can be construed to mean the housing provider will exclude any applicant with an arrest or conviction record. Instead, the housing provider should wait until after determining the applicant is legally eligible to rent the housing unit, and 2) the applicant is qualified to rent the housing unit under the housing provider's criteria for assessing rental history and credit history, if such assessments are used by the housing provider, to conduct or obtain a background check.

In addition the housing provider must post a notice provided by the HRC regarding rights and obligations under this ordinance (HRC FCO Notice) prominently on their website and at any location under their control that is frequently visited by applicants or potential applicants of Affordable Housing in San Francisco.

**8) Are affordable housing providers required to post the HRC FCO Notice in languages other than English?**

Yes. Affordable Housing Providers must post the notice in English, Spanish, Chinese, Tagalog and any other language spoken by more than 5% of the San Francisco population.

HRC has published translations of the notice in Chinese, Spanish, and Tagalog on its website. The HRC shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco population.

You can download a copy of the notice containing all required translations [here](#).

**9) If an affordable housing provider receives federal funding, and is thus subject to federal regulations requiring criminal history screening for certain buildings or units, is the affordable housing provider still subject to the FCO's notice and posting requirements?**

Yes. Unless, federal regulations directly and specifically conflict with the FCO, affordable housing providers are required to comply with FCO. The HRC is aware that there are certain convictions that preclude some individuals from living in federally subsidized housing. However, the affordable housing providers must comply with all procedural requirements of the FCO before taking adverse action against the individual.

## **PROCEDURES FOR THE ADVERTISEMENTS, APPLICATIONS, AND INTERVIEWS**

**10) How can I be sure my advertisements and online postings comply with the FCO?**

*No Blanket Exclusions*

Housing Providers may not produce or disseminate any advertisement related to affordable housing that expresses, directly or indirectly, that any person with an arrest or conviction record will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by local, state, or federal law.

*Applicants with Prior Arrest and Conviction Records will be Considered*

Housing providers are required to state in all solicitations or advertisements for the rental or lease of affordable housing placed by the housing provider, or on behalf of the housing provider, that the housing provider will consider for tenancy qualified applicants with arrest or conviction record in a manner consistent with the requirements of this Article.

**11) Our company uses pre-made forms which request conviction history information. Can we still use these forms?**

No. Under Article 49, affordable housing providers may not inquire about, either verbally or in written form, an applicant's conviction history until after the applicant has been deemed legally eligible and otherwise qualified to rent the unit.

**12) Our company uses a background check reporting company that provides information prohibited by the FCO. Is it our responsibility to ensure that the company complies with the FCO after August 13, 2014?**

Yes. If your background check company currently provides information which violates the FCO, you must take steps to ensure they discontinue providing this information. In order to ensure compliance with the FCO, the HRC recommends that affordable housing providers keep records verifying they do not receive or consider information that violates the law. Per section 4912 of the FCO, HRC will be monitoring compliance by reviewing affordable housing provider records on an annual basis.

**13) Does an online rental advertisement have to include information about the FCO?**

Yes, the required statement discussed Question 7 applies to all solicitations and advertisements, including online advertisements.

**14) Some housing providers use a single tenant application form, provided to all applicants, regardless of whether an applicant is applying for a unit in San**

**Francisco or in Dallas. Can the form include a question about an applicant's arrest and conviction record, with a disclaimer that if the applicant is applying for a position in San Francisco, he/she should skip that question?**

You should consider omitting this question from the form. By leaving the question in the application, the housing provider runs the risk that an applicant will inadvertently provide arrest and conviction information, and that the housing provider will improperly consider such information.

Otherwise, it would be preferable to use a separate rental application form for San Francisco units to ensure compliance with the FCO. Alternatively, housing providers could disable the answer field for any such question in electronic applications.

If a housing provider chooses to use a single application form, then it should include a clear and conspicuous disclaimer next to the question instructing applicants for San Francisco units not to answer that question.

**15) Our building has a waitlist of applicants for available units. The individuals on that waitlist already filled out applications which inquire about arrest and conviction history. Are these applications subject to the FCO?**

Yes. Beginning on August 13, 2014, affordable housing providers may not at any time ask an applicant in person, on an application or by any other means to disclose any details about his or her or a household member's conviction history before determining that:

- 1) The applicant is legally eligible to rent the housing unit, and
- 2) The applicant is qualified to rent the housing unit under the housing provider's criteria for assessing rental history and credit history, if such assessments are used by the housing provider

Affordable Housing providers who are considering applicants who submitted arrest and/or conviction information before August 13, 2014 must take steps to ensure compliance with FCO. For example, housing providers may have an employee who

does not determine housing eligibility redact information on housing applications. Also, a housing provider can provide all individuals on their waitlist with a new, FCO compliant application.

## **PROCEDURES FOR INTERVIEWING APPLICANTS**

**16) Can an affordable housing provider run a criminal background check on a housing applicant or tenant?**

Yes, but WHEN and HOW an affordable housing provider can conduct a background check on an applicant is regulated by the FCO.

**17) Can an affordable housing provider ask about arrest and conviction records on a rental application?**

No. An affordable housing application may not contain any inquiry into an applicant's arrest and conviction records. An affordable housing provider can only ask about an applicant's unresolved arrest and conviction records after the affordable housing provider has determined

- (1) The applicant is legally eligible to rent the housing unit, and
- (2) The applicant is qualified to rent the housing unit under the housing provider's criteria for assessing rental history and credit history, if such assessments are used by the housing provider.

Even then, the six categories of information that are designated as OFF LIMITS by the ordinance can never be asked about, sought out, or considered by an affordable housing application under any circumstances, at any stage of the hiring process. Please see Question 22 for the six categories of "Off Limits" information.

**18) Can an affordable housing provider ask about arrest and conviction records on an application if they don't use the information until after they interview the applicant or tenant?**

No. Section 4906(b) of the FCO prohibits affordable housing providers from requiring applicants to disclose on a housing application the fact or details of any Conviction History, any Unresolved Arrest, or any of the six "off-limits" categories. The law only

permits an affordable housing provider to inquire about an applicant's unresolved arrest and conviction records after the affordable housing provider has determined

- (1) The applicant is legally eligible to rent the housing unit, and
- (2) The applicant is qualified to rent the housing unit under the housing provider's criteria for assessing rental history and credit history, if such assessments are used by the housing provider.

## **USING ARREST AND CONVICTION RECORDS IN HOUSING DECISIONS**

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**19) Does the FCO require affordable housing providers to conduct a background check?**

No. Nothing in this ordinance requires affordable housing providers to inquire into conviction histories, to conduct background checks or to base housing decisions on conviction histories.

This ordinance only applies to affordable housing providers who choose to inquire into an applicant's or tenant's conviction history or run background checks for applicants or tenants.

Many housing providers already do an eviction check on applicants; this practice will not be affected by this legislation.

**20) Can an affordable housing provider ever ask an applicant about his/her arrest or conviction record?**

The FCO does not completely bar affordable housing providers from asking about applicants' unresolved arrest and conviction records. Instead, the FCO limits WHEN and HOW an affordable housing provider may ask about an applicant's conviction history and unresolved arrests. However, the six categories of information identified as OFF LIMITS in Section 4904(a) can never be asked about, sought out, or considered by an affordable housing provider under any circumstances, at any stage of the process.

**21) When can an affordable housing provider ask about an applicant's unresolved arrest or conviction record?**

An affordable housing provider can ask about an applicant's conviction history or unresolved arrests only *after* the affordable housing provider has determined:

- (1) The applicant is legally eligible to rent the housing unit, and
- (2) The applicant is qualified to rent the housing unit under the housing provider's criteria for assessing rental history and credit history, if such assessments are used by the housing provider.

**22) What information is OFF LIMITS to affordable housing providers?**

The following information is OFF LIMITS, meaning it can never be asked about, sought out, or considered by an affordable housing provider under any circumstances, at any stage of the process:

- 1) An arrest not leading to a conviction—except under specific circumstances identified below with respect to an unresolved arrest;
- 2) Participation in, or completion of, a diversion or a deferral of judgment program;
- 3) A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise made inoperative;
- 4) A conviction or any other determination in the juvenile justice system, or information regarding a matter considered in, or processed through, the juvenile justice system;
- 5) A conviction that is more than 7 years old (measured from the date of sentencing); or
- 6) A criminal offense other than a felony or a misdemeanor—such as an infraction.

**23) What is an Unresolved Arrest?**

An unresolved arrest is an arrest that is undergoing an active pending investigation or trial that has not yet been resolved. (See Police Code Section 4903). An arrest is resolved once the individual is released with no charges filed against him/her, or if the charges have been dismissed or discharged by the district attorney or the court.

Unresolved arrests may be considered by affordable housing providers, *if and only if* the unresolved arrest is directly related, that is, if it has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing and it is less than 7 years old. An affordable housing provider's consideration of an unresolved arrest must be part of an individualized assessment. See Question 29 for definition of individualized assessment.

**24) It is off-limits for an affordable housing provider to ask about a conviction that is more than 7 years old. Is the 7 years counted from when the person started or finished serving a sentence?**

The 7 years is counted from the date of conviction, which the FCO defines as the date of sentencing. So, if the date of sentencing was more than seven years ago, information about this conviction is OFF LIMITS, regardless of when the person finished serving the sentence.

Unless state or federal law directly mandates otherwise, a conviction that is older than 7 years old may never be considered.

**25) Will this law require affordable housing providers to rent to all applicants with conviction histories?**

No. First determine if the applicant is legally eligible and qualified and if applicant is qualified to rent the housing unit under the housing provider's criteria for assessing rental history and credit history, if such assessments are used by the housing provider. Only then may you inquire about or consider unresolved arrests or conviction histories. After making the determination that an applicant is otherwise eligible or qualified, an affordable housing provider may consider only **directly-related** convictions. See Question 26 for a definition of directly-related.

This law will prohibit a housing provider from inquiring about or considering the following 6 categories:

- 1) An arrest not leading to a conviction—except under specific circumstances identified below with respect to an unresolved arrest;
- 2) Participation in, or completion of, a diversion or a deferral of judgment program;
- 3) A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise made inoperative;
- 4) A conviction or any other determination in the juvenile justice system, or information regarding a matter considered in, or processed through, the juvenile justice system;

- 5) A conviction that is more than 7 years old (measured from the date of sentencing); or
- 6) A criminal offense other than a felony or a misdemeanor—such as an infraction.

**26) What does “Directly-Related” conviction or unresolved arrest mean?**

A conviction is “directly related conviction,” if the conduct for which a person was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing. In making such a determination a housing provider must look at a number of factors including whether the housing offers the opportunity for the same or a similar offense to occur and whether circumstances leading to the conduct for which the person was convicted will recur in the housing, and whether supportive services that might reduce the likelihood of a recurrence of such conduct are available on-site.

**27) What steps must affordable housing providers follow when they inquire about an applicant’s unresolved arrest or conviction history?**

If an affordable housing provider does screen applicants for prior convictions, there are a few simple things that they can do to follow this law:

First, housing providers should make sure to post the HRC FCO Notice “Notice To Tenants, Housing Applicants, And Affordable Housing Providers In The City And County Of San Francisco” prominently on their website and in frequently visited locations. The notice should be posted in English, Spanish, Chinese, and Tagalog. It is available [here](#).

Second, any advertisements and postings may state that the affordable housing provider will be conducting a background check, but they cannot indicate a blanket ban against people with conviction histories. Blanket policies would violate this law because the law requires an individualized assessment.

Third, the affordable housing provider should remove questions about unresolved arrests or convictions from its initial application. The provider may inquire about prior convictions only after determining an applicant is otherwise qualified.

Fourth, before conducting a criminal background check, the affordable housing provider must provide the applicant with a copy of the HRC FCO Notice “Notice To Tenants, Housing Applicants, And Affordable Housing Providers In The City And County Of San Francisco” available [here](#). If the applicant speaks Spanish, Chinese, or Tagalog, the affordable housing provider must provide the notice in the respective language.

Fifth, before taking any prospective adverse action, such as failing or refusing to rent or lease real property to an individual, or failing or refusing to continue to rent or lease real property to an individual, or failing or refusing to add a household member to an existing lease, or to reducing any tenant subsidy, against an applicant, the affordable housing provider must provide the applicant with a copy of the background check report, indicate exactly which directly related conviction or unresolved arrest is the basis for the prospective adverse action, and give him or her a chance to present additional information and request reconsideration.

Finally, before making a final determination, the affordable housing provider should allow the applicant 14 days to respond orally or in writing with information regarding inaccuracies in the report, evidence of rehabilitation or any other evidence of mitigating circumstances. Affordable housing providers must reconsider the prospective adverse action in light of the information provided by the applicant and make determination within a reasonable time.

**28) What is an adverse action?**

Adverse Housing Action in the context of housing shall mean to evict from, fail or refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or to reduce any tenant subsidy. The “Adverse Action” must relate to real property in the City.

**29) An affordable housing provider must conduct an individualized assessment when making a housing decision based on the applicant’s conviction history. What is an individualized assessment?**

An individualized assessment requires the housing provider to consider only directly-related convictions, the time that has elapsed since the conviction or unresolved arrest and any evidence of inaccuracy or evidence of rehabilitation or other mitigating factors. A Directly-Related Conviction in the housing context means that

the conduct for which a person was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing.

In determining whether the conviction or Unresolved Arrest is directly related to the housing, the Housing Provider shall consider

- 1) Whether the housing offers the opportunity for the same or a similar offense to occur and
- 2) Whether circumstances leading to the conduct for which the person was convicted will recur in the housing, and
- 3) Whether supportive services that might reduce the likelihood of a recurrence of such conduct are available on-site.

In addition to the requirement that an affordable housing provider shall only consider directly-related convictions, an affordable housing provider must also consider:

- How much time has elapsed since the conviction or unresolved arrest;
- Evidence of inaccuracies in the applicant's conviction history;
- Evidence of the applicant's rehabilitation; and,
- Other mitigating factors.

- 30) As part of the individualized assessment, an affordable housing provider must consider evidence inaccuracies in the record, evidence of an applicant's rehabilitation or other mitigating factors. What constitutes evidence of an applicant's rehabilitation and what kind of mitigating factors can an applicant choose to provide?**

**Evidence of Rehabilitation or Other Mitigating Factors may include but is not limited to:**

- A person's satisfactory compliance with all terms and conditions of parole and/or probation (however, inability to pay fines, fees, and restitution due to indigence

shall not be considered noncompliance with terms and conditions of parole and/or probation);

- Employer recommendations, especially concerning a person’s post-conviction employment, educational attainment, vocation, or vocational or professional training since the conviction, including training received while incarcerated;
- Completion of or active participation in rehabilitative treatment (e.g., alcohol or drug treatment);
- Letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, or parole/probation officers who have observed the person since his or her conviction;
- Age of the person at the time of the conviction;
- Examples of other mitigating factors that are offered voluntarily by the person may include but are not limited to explanation of the precedent coercive conditions, intimate physical or emotional abuse, or untreated substance abuse or mental illness that contributed to the conviction.

**31) An affordable housing provider must delay an adverse action for a reasonable period and reconsider his/her decision if the applicant provides evidence of inaccuracies in the unresolved arrest and conviction record, or evidence of rehabilitation or mitigating factors. What constitutes a “reasonable period?”**

What constitutes a “reasonable period” will usually depend upon the specific circumstances of the applicant, the rental unit position, and the affordable housing provider. Factors for determining reasonableness may include the amount of mitigating evidence submitted by the applicant, the average length of time that the affordable housing provider spends in selecting a tenant, and the urgency with which a unit must be filled. In general, a reconsideration period will likely be reasonable if it gives the affordable housing provider an opportunity to conduct a new individualized assessment that takes into account all additional information.

**32) Does the FCO apply to current tenants or just applicants?**

The requirements of the FCO apply to (1) applicants, (2) potential applicants for tenancy, and (3) tenants. The requirements apply not only to the selection process for new applicants but also to housing-related decisions for existing tenants. For

example, the prohibition on inquiring into the six areas that are “off-limits” during the selection process for new tenants also applies to existing tenants; an affordable housing provider may not base any adverse action for an existing tenant on those six “off-limits” categories. As another example, the procedures an affordable housing provider must follow when basing a prospective adverse action on information in an unresolved arrest or conviction record also apply to current tenants.

## **FILING A COMPLAINT WITH THE HRC**

### **33) I think that my housing application was rejected in violation of the Fair Chance Ordinance, what should I do?**

If you believe that your rights under the Fair Chance Ordinance have been denied, you may:

- Speak to the Human Rights Commission about your rights without any negative action or retaliation taken against you by your housing provider. You may email [hrc.info@sfgov.org](mailto:hrc.info@sfgov.org) or call (415) 252-2500.
- File a complaint within 60 days of the alleged violation.
- Speak to a community-based organization about your rights under the ordinance.

### **34) What if I think an affordable housing provider violated this ordinance, but I’m not directly affected by the violation?**

Anyone who believes that a housing provider may have violated this law may speak to the HRC or a community-based organization and file a complaint

### **35) Will my complaint be kept confidential?**

HRC will strive to keep your identity confidential, and will not affirmatively reveal your identity unless you so authorize. However, due to the nature of the FCO inquiry, you should keep in mind that it is possible for an affordable housing provider to speculate on a complainant’s identity.

If you believe an affordable housing provider has violated the FCO, but are fearful of possible retaliation, please call the HRC at 415-252-2500. We will discuss your concerns in full confidence.

One potential option is for a third party, such as an advocacy organization, to file a complaint on your behalf.

**36) How will I defend myself if a complaint is made against me?**

When a person files a complaint with HRC, the evidence must show that violation of the law took place. Our investigators work with the complainant and affordable housing providers to gather evidence by conducting interviews, obtaining witness statements, and reviewing written information.

The process is administrative and designed so that the parties do not need to hire an attorney or spend an unreasonable amount of time to respond to the charge.

**37) What types of evidence will the HRC look at to determine whether a violation of the FCO has occurred?**

When investigating allegations of discrimination, the HRC will look at the whole record, for example: the questions asked in a rental application and in interviews; the information provided; whether the housing provider gave the applicant the HRC FCO Notice informing them of their rights; whether the housing provider gave the applicant copy of the conviction record and indicated the basis for the denial; whether the housing provider allotted the applicant 14 days to respond; or whether the housing provider conducted an individualized assessment.

## **PROTECTED RIGHTS**

**38) What rights are protected under the FCO?**

The following activities include, but are not limited to, the protected exercise of right under this Article:

1. The right to file a complaint;
2. The right to inform any person about a housing provider's alleged violation of the Article;
3. The right to cooperate with the HRC or other persons in the investigation or prosecution of any alleged violations of the Article;
4. The right to oppose any policy, practice or act that is unlawful under this Article;
5. The right to inform any person of his or her rights under this Article.

Taking adverse action against a person within 90 days of the exercise of one or more of the rights described above shall create a rebuttable presumption that such adverse action was taken in retaliation for the exercise of these rights.

**39) Can an affordable housing provider retaliate against an individual for exercising his/her rights under the FCO?**

No. Housing providers or any other person may not interfere with, restrain, or deny the exercise of or the attempt to exercise any right protected under this Article. This includes interrupting, terminating or failing or refusing to initiate or conduct a transaction involving the rental or lease of residential real property, including falsely representing that a residential unit is not available for rental or lease. This also includes taking adverse action against a person or family member in retaliation for exercising rights protected under the Article. These protections apply to any person who mistakenly, but in good faith, alleges violation of this Article. Examples of what may constitute adverse action are defined in Question 28.

Taking an adverse action against an individual within 90 days of the individual exercising his/her rights under the FCO creates a rebuttable presumption that the affordable housing provider took such action in retaliation for exercise of those rights. The affordable housing provider will then bear the burden of demonstrating that the adverse action was taken for a legitimate, non-retaliatory business reason.

## **RECORDING KEEPING REQUIREMENTS**

**40) What records do affordable housing providers need to maintain and retain to be in compliance with the FCO?**

Affordable Housing Providers must maintain and retain, for a period of three years, records documenting compliance with the FCO. Examples of records documenting compliance include but are not limited to:

- documentation showing that the HRC FCO Notices were posted as required
- any background check reports obtained
- copies of housing ads and postings
- tenant application forms distributed
- tenant applications submitted by applicants
- copies of agreements between housing providers and background check companies

- copies of waiting lists and reasons for denials
- documentation of applicant interviews including forms, notes, and interview questions
- any information provided to applicant regarding potential adverse action
- any information received from an applicant or tenant in response to a background check
- documentation of all individualized assessments conducted
- any documentation of rehabilitation or mitigating factors submitted by applicants or tenants
- documentation of adverse actions based on unresolved arrest or conviction records

**41) How long to affordable housing provider have to maintain records documenting their compliance with the FCO?**

3 years

**42) What happens if an affordable housing provider fails to maintain and retain adequate records?**

An affordable housing provider that fails to maintain or retain adequate records documenting compliance with the FCO, or does not allow HRC reasonable access to such records, is presumed to have violated the FCO, absent clear and convincing evidence otherwise.

## **Affordable Housing Provider Reporting Requirements**

**43) Is the affordable housing provider required to report on its compliance with the FCO to the HRC?**

Yes. Affordable housing providers are required to submit an annual reporting form to HRC. This form will be available on the HRC website annually.

## **ENFORCEMENT AND PENALTIES**

**44) What happens if the HRC determines that an affordable housing provider has violated the FCO?**

- **First Violation and Violations Prior to August 13, 2015**  
For a first violation, or for any violation prior to August 13, 2015, the HRC Director must issue a warning and notice to correct and offer the housing provider technical assistance on how to comply with the requirements of this Article.
  - **Second Violation**  
For a second violation, the HRC Director may impose an administrative penalty of no more than \$50.00 that the housing provider must pay for each applicant whose rights were violated or continue to be violated.
  - **Subsequent Violations**  
For subsequent violations, the HRC Director may increase the penalty to no more than \$100.00.
  - **Multiple Applicants Impacted by Same Violation**  
If multiple applicants are impacted by the same procedural violation at the same time (e.g. all applicants for a certain housing unit are asked for their conviction history on the initial application) the violation shall be treated as a single violation rather than multiple violations.
  - **Allocation of Penalties**  
The penalties are payable to the City for each applicant whose rights were, or continue to be, violated. Such funds shall be allocated to the HRC and used to offset the costs of implementing and enforcing this Article.
-