

Rules of Procedure

San Francisco Police Code

Article 49

Procedures for Considering Arrests and Convictions
in Employment and Housing Decisions



**CITY AND COUNTY OF SAN FRANCISCO
HUMAN RIGHTS COMMISSION**

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I. Introduction

After public hearings and considerations of testimony and documentary evidence, the Board of Supervisors found that the health, safety, and well-being of San Francisco's communities depend on increasing access to employment and housing opportunities for people with arrest or conviction records. In response, the Board of Supervisors unanimously voted to pass the "Fair Chance Ordinance" in February of 2014.

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.

The Commission is also aware of the disproportionate arrest and incarceration of African Americans, Latinos, and Native Americans and the lifelong post-conviction stigma that follows individuals and compromises their human rights and ability to reintegrate into society. By reducing barriers, the Fair Chance Ordinance promotes public safety and reintegration. In addition, the Ordinance redresses some of the human rights concerns implicated by the over-incarceration of these communities.

The Fair Chance Ordinance was codified as San Francisco Police Code Article 49: Procedures for Considering Arrests and Convictions and Related Information in Employment and Housing Decisions ("Article" or "Article 49").

II. Preemption and Scope of Authority

Article 49 instructs the Human Rights Commission (HRC), in consultation with the Mayor's Office of Housing and Community Development (MOHCD), to establish rules and regulations that implement the housing provisions of the Article.

Article 49 authorizes the HRC, in consultation with the MOHCD, to take appropriate steps to enforce the Article and coordinate enforcement, including the investigation of any possible violations of the Article.

In developing these rules, the HRC is guided by its understanding of the importance of fulfilling the goals of this Article and has given weight to considerations of equity and practicality. The rules seek to provide clear direction to affordable housing providers and housing applicants and residents regarding the requirements of this Article.

Nothing in these rules shall be interpreted or applied so as to create any requirements, power or duty in conflict with federal or state law or with a requirement of any government agency, including any agency of City government, implementing federal or state law. The HRC is not authorized to enforce any provision of Article 49 upon determination that its application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

III. DEFINITIONS

The definitions are derived directly from Article 49 of the San Francisco Police Code.

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.

Affordable Housing shall mean 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.

Arrest shall mean a record from any jurisdiction that does not result in a conviction and includes information indicating that a person has been questioned apprehended taken into custody or detained, or held for investigation, by a law enforcement, police, or prosecutorial agency and/or charged with, indicated, or tried and acquitted for any felony, misdemeanor or other criminal offense. “Arrest” is a term that is separate and distinct from, and that does not include, “Unresolved Arrest.”

Background Check Report shall mean any criminal history report, including but not limited to those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement or police agencies, or courts, or by any consumer reporting agency or business, employment screening agency or business, or tenant screening agency or business.

Conviction shall mean a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor; provided that the conviction is one for which the person has been placed on probation, fined, imprisoned, or paroled. The definition of a conviction shall not include items listed in Section V.A. of these Rules.

Conviction History shall mean information regarding one or more Convictions or Unresolved Arrests, transmitted orally or in writing or by another means, and obtained from any source, including but not limited to the individual to whom the information pertains and a Background Check Report.

Directly-Related Conviction in the housing context shall mean 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 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.

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.

Fair Chance Ordinance or Fair Chance Act – The name commonly used to refer to Article 49 of the San Francisco Police Code: Procedures for Considering Arrests and Convictions and Related Information in Employment and Housing Decisions.

Housing provider shall mean any entity that owns, master leases, or develops Affordable Housing in San Francisco. “Housing Provider” also includes owners and developers of below-market-rate housing in the City or “affordable units.”

Inquire shall mean any direct or indirect conduct intended to gather information from or about an applicant, candidate, potential applicant or candidate, using any mode of communication, including but not limited to application forms, interviews, and background check reports.

Person shall mean any individual, person, firm, corporation, business or other organization or group of persons however organized.

Unresolved Arrest shall mean an arrest that is undergoing an active pending criminal investigation or trial that has not yet been resolved. An arrest has been resolved if the arrestee was released and no accusatory pleading was filed charging him or her with an offense, or if the charges have been dismissed or discharged by the district attorney or the court.

IV. Procedures for the Advertisements, Applications, and Interviews

Nothing in the Ordinance affects additional appeals procedures or rights afforded to tenants and housing applicants elsewhere. In addition, nothing in the Ordinance mandates a conviction inquiry or background check. Affordable housing providers who do not inquire about an applicant's prior unresolved arrests or conviction record or who do not perform background checks on applicants are in compliance with this Article. Affordable housing providers who choose to inquire about an applicant's unresolved arrests or conviction history or who perform background checks must comply with the following procedures.

A. Advertisements and Solicitations

1. 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.

2. 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.

B. HRC Notice and Posting Requirements

The HRC is responsible for publishing and making available to affordable housing providers a notice suitable for posting that informs applicants of their rights under this Article. The HRC shall make this notice available to housing providers in English, Spanish, Chinese, and Tagalog and all other languages spoken by more than 5% of the San Francisco population.

1. Website

Housing providers must prominently post on their website the HRC notice in all of the languages referenced above.

2. Frequently Visited Locations

Housing providers must prominently post the HRC notice in all the languages referenced above at any location under their control that is frequently visited by applicants or potential applicants for the rental or lease of affordable housing in San Francisco.

3. Languages Access

In addition to making the notice available in English, Spanish, Chinese, and Tagalog, the HRC shall update the 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.

C. Interviews and Applications: No Inquiry Prior to Determination of Qualification

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, until the housing provider has first determined 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.

D. Obtain but not Review

For the sake of efficiency, a housing provider may obtain a conviction history report at the same time as the housing provider obtains the rental history report and credit history report for an applicant. However, a housing provider may not in any way look at or review the conviction history report until *after* determining that based on the rental history and credit history the applicant is qualified to rent the housing unit. Housing providers must employ practices and safeguards to ensure that conviction history information is not inadvertently viewed prior to a determination of qualification for a housing unit. It is a violation of this Ordinance if the records are viewed prior to a determination of qualification.

E. Notice Requirement

2. Notice to Applicant Prior to Conducting Criminal Background Inquiry

In addition to posting the notice prominently on the website and in frequently visited locations, housing providers must individually provide each housing applicant a copy of the HRC issued notice referenced above in IV.B prior to any conviction history inquiry.

3. Language Access

If a housing applicant speaks Spanish, Chinese, Tagalog or any other language spoken by more than 5% of the San Francisco population, the housing provider must provide the applicant with the HRC notice in his or her respective language.

V. Procedures for Decision Making

A. **Prohibited Inquiries and Considerations**

Housing providers may not at any time or by any means inquire about, require disclosure of, or if such information is received, base an adverse action in whole or in part on any of the following:

1. An arrest not leading to a conviction, unless it is an “unresolved arrest” as defined in Section III above;
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 rendered inoperative;
4. A conviction or any other determination or adjudication 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, the date of conviction being the date of sentencing;
6. Information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

Inquiring about or basing any adverse decision on any of the above 6 categories is a violation of Article 49. To ensure that none of this prohibited information is considered, affordable housing providers should explicitly exclude the above-information from any inquiry into conviction history. For example, if a criminal history questionnaire is required of an applicant, it should state that the above-information should not be disclosed. In addition, commercial background check companies should be informed that the above-information should not be included in any report.

Any affordable housing provider who decides to conduct a commercial background check should be aware that these reports can be inaccurate or incomplete. Upon receiving notice that information contained in the report falls into one of the prohibited 6 categories, the affordable housing provider should not consider or rely upon that criminal history information to take an adverse action.

B. **Consideration Limited to Directly-Related Convictions and Unresolved Arrests**

Affordable housing providers may only consider directly-related convictions within the past 7 years or directly-related unresolved arrests for a housing decision. A directly-related conviction or unresolved arrest means the following: 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:

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

In addition to considering whether a conviction or an unresolved arrest is directly-related as defined above, the housing provider shall also consider the time that has elapsed since the conviction or unresolved arrest.

If a housing provider determines that a conviction or an unresolved arrest is not directly-related or that reasonable times has elapsed, no further action is required. If however, the housing provider intends to take adverse action based on a directly-related conviction within the past 7 years or a directly-related unresolved arrest, the housing provider must comply with the rules below.

C. Written Notice and Copy of Report Prior to Prospective Adverse Action

If a housing provider intends to take an adverse action based on directly-related conviction with the past 7 years or a directly-related unresolved arrest, the housing provider must take the following steps:

1. Notify the applicant in writing of the prospective adverse action;
2. Give the applicant a copy of any conviction history or unresolved arrest;
3. Specifically indicate the item or items forming the basis for the prospective adverse action;
4. Provide the applicant with a copy of language-appropriate HRC notice described in Section IV.B which explains the applicant's right under this Article, including his or her right to respond, the manner in which he or she may respond, and the evidence he or she may submit; and
5. Provide the applicant with the opportunity to respond and delay any adverse action in order to reconsider in light of evidence submitted by the applicant.

Examples of housing related adverse actions include, but are not limited to, eviction, failing or refusing to rent or lease property to an individual, failing or refusing to add a household member to an existing lease, or reducing any tenant subsidy.

D. Opportunity to Respond

Within 14 days of the date of the written notice described above in Section V.C., the applicant, or any person on behalf of the applicant, may give the housing provider notice orally or in writing of evidence of any of the following:

1. Inaccuracies of the item or items of conviction history; examples of inaccuracies include but are not limited to:
 - a. Mismatching of the subject of the report with another person;
 - b. Revealing restricted information;
 - c. Omitting information of how an arrest was resolved;
 - d. Repeating the same information giving the appearance of multiple offenses;
 - e. Mischaracterizing the seriousness of the offense;
2. Evidence of rehabilitation; examples of evidence of rehabilitation include but are not limited to:
 - a. 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);
 - b. Employer recommendations, especially concerning a person's post-conviction employment, educational attainment or vocation or vocational or professional training since the conviction, including training received while incarcerated;
 - c. Completion of or active participation in rehabilitative treatment (e.g., alcohol or drug treatment);
 - d. 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;
 - e. Age of the person at the time of the conviction.
3. Evidence of other mitigating circumstances; examples of mitigating factors that are offered voluntarily by the person may include but are not limited to:
 - a. Explanation of the precedent coercive conditions;
 - b. Intimate physical or emotional abuse;
 - c. Untreated substance abuse or mental illness that contributed to the conviction.

E. Conduct an Individualized Assessment

A housing provider may not deny an applicant based on his or her prior conviction history without first conducting an individualized assessment. In conducting an individualized assessment, the housing provider must consider only directly-related convictions and directly-related unresolved arrests and the time that has elapsed since the conviction or unresolved arrest. In addition to considering the time that has elapsed, the housing provider shall also review and consider any evidence of inaccuracy or evidence of rehabilitation or other mitigating factors provided by the applicant on the applicant's behalf.

The HRC shall not find a violation based on a housing provider's decision that an individual applicant's conviction history or unresolved arrest is directly-related, but may otherwise find a violation of this Article. For example, a violation may be found if the housing provider failed to take the steps to conduct an individualized assessment, including determining whether a conviction or unresolved arrest is directly-related, considering the time elapsed, or reviewing and considering evidence presented by the applicant.

F. Delay Adverse Action to Reconsider

A housing provider must delay any adverse action for a reasonable period after receipt of information and, during that time, shall reconsider the prospective adverse action in light of the information.

G. Written Notification of Adverse Action

Upon taking any adverse action based on an unresolved arrest or conviction history of an applicant, the housing provider shall notify the applicant within a reasonable time and in writing of the final adverse action.

VI. Retaliation

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 above in these Rules.

A. Protected Exercise of Right under this Article

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

B. 90-Day Presumption

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.

VII. Filing a Complaint with the HRC

A. Who May Report

An applicant or any other person may report to the HRC any suspected violation of this Article.

B. HRC-Initiated Investigations

The HRC may, in its sole discretion, investigate possible violations of this Article on its own initiative.

C. Elements of a Complaint

A complaint may be made in writing, or if made orally, shall be put in writing by HRC staff. The complaint shall contain the following:

1. The complete name and contact information of the person making the complaint, unless the person making the complaint wishes to remain anonymous;
2. A plain and concise statement of facts, which provide the basis of the complaint, including the specific date(s), action(s), practice(s) or incident(s) alleged to violate this Article;
 - a. The signature of the person making the complaint verifying under penalty of perjury that the response is true and complete to the best of the signatory's knowledge and belief. In cases in which the complainant wishes to remain anonymous or in HRC initiated complaints, the complaint shall be verified by an HRC staff;
3. Possible violations of the Article include, but are not limited to, the following examples:
 - a. An advertisement for affordable housing that does not state that the provider will consider qualified applicants with criminal histories;
 - b. An advertisement for affordable housing that expresses directly or indirectly that a person with an arrest or conviction record will not be considered;
 - c. An application for affordable housing that contains an inquiry about prior arrest or conviction record;
 - d. A housing provider who inquires about an applicant's conviction background prior to determining eligibility for housing;
 - e. A housing provider who reviews an applicant's conviction report prior to determining eligibility for housing;
 - f. A housing provider who inquires about an applicant's conviction background prior to providing applicant the HRC notice informing them of their rights under this Article;
 - g. A housing provider who does not post the HRC notice on its website;
 - h. A housing provider who does not post HRC notice in locations frequented by tenants or housing applicants;

- i. A housing provider who does not provide the HRC notice in the languages mandated by the ordinance;
- j. A housing provider who inquires about or considers one of the six off-limits categories, enumerated in section V.A. of these Rules and Section 4906 of Article 49;
- k. A housing provider who does not give an applicant a copy of the conviction history report or an unresolved arrest prior to taking a prospective adverse action;
- l. A housing provider who does not specify which conviction or unresolved arrest is the basis for the adverse action;
- m. A housing provider who does not give an applicant notice of their right to provide evidence of inaccuracies and evidence of rehabilitation or mitigating circumstances;
- n. A housing provider who does not offer the applicant 14 days to provide evidence of inaccuracies and evidence of rehabilitation or mitigating circumstances;
- o. A housing provider who fails to conduct an individualized assessment. The HRC may not find a violation based on a housing provider's decision that an applicant's conviction within the past 7 years or unresolved arrest is directly-related, but may find a violation of this Article if the housing provider failed to take the steps to conduct the individualized assessment, which requires determining whether a conviction or unresolved arrest is directly-related, considering the time elapsed, and reviewing and considering evidence presented by the applicant;
- p. A housing provider who does not delay the adverse action until they have reconsidered the decision in light of evidence provided by the applicant;
- q. A housing provider who does not provide notice of a final adverse action to the applicant;
- r. A housing provider who retaliates against someone for exercising his or her rights under this ordinance;
- s. A housing provider who fails to maintain and retain records as required by this Article.

D. Timeliness of a Complaint

A suspected violation of this Article may be reported within 60 days of the date that the suspected violation occurred, or that the complainant became aware that the action violating this ordinance occurred, whichever date occurred more recently.

E. Amending a Complaint

The complaint may be amended any time prior to resolution. HRC shall serve all amended complaints on the housing provider with instructions concerning which

allegations of the amended complaint, if any, the housing provider shall answer, and when the verified response is due. If the amendment occurs before the housing provider has answered, the housing provider shall be served with and shall respond to the amended complaint. The housing provider's time for filing a response shall start upon service of the amended complaint.

F. Withdrawing a Complaint

A complainant may withdraw a complaint any time prior to resolution. HRC shall notify the housing provider in writing within 5 days after the complaint has been withdrawn. A complaint may be withdrawn without prejudice, but nothing in these Rules shall require the HRC to accept a new complaint alleging substantially identical conduct if the complainant has engaged in repeated or unwarranted withdrawal and resubmission of complaints. After a withdrawal, the HRC may, in its sole discretion, initiate an investigation of a possible violation of this article as authorized above in section VII.B.

G. Confidentiality

The HRC shall encourage reporting of violations by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the resident, applicant or other person reporting the violation, unless such a person authorizes the HRC to disclose his or her name and identifying information as necessary to enforce this Article or for other appropriate purposes.

VIII. HRC Notice of Alleged Violation

The HRC shall serve the housing provider with notice that a complaint of an alleged violation has been filed against them and that they are required to respond.

In addition to including the elements of a complaint listed above in VII.C., the notice shall:

- Clearly state the date by which the response is due;
- Inform the housing provider of their right to respond to the alleged violation and describe the information the housing provider is required to include in the response;
- State that failure to respond to the complaint may result in a default decision;
- Offer the housing provider technical assistance;
- Inform the housing provider that retaliation against the complainant or suspected complainant is prohibited by this Article;
- Describe HRC's enforcement powers and administrative penalties;
- Inform the housing provider of his or her right to appeal the HRC Director's determination.

IX. Housing Provider Response

A. Who May File

The housing provider or an authorized representative shall file a verified response to the complaint or amended complaint in writing.

B. Content

A response shall contain the following:

1. The full name and title, where applicable of the housing provider;
2. The name, address, and telephone number of the housing provider's representative, if any;
3. A specific admission or denial of each allegation contained in the complaint. If the housing provider does not have knowledge or information sufficient to form a belief as to the truth of a particular allegation, the housing provider shall so state and such statement shall operate as a denial of the allegations;
4. A statement of any matter constituting an explanation or affirmative defense; and
5. The signature of the housing provider or authorized representative, verifying under penalty of perjury that the response is true and complete to the best of the signatory's knowledge and belief;

C. Timeliness

The response shall be filed within 10 business days of service of the complaint.

D. Amendment of Response

The housing provider, at the discretion of the Commission staff, may amend its response.

E. Failure to Respond to a Complaint

Any party who fails to file a response to a complaint or amended complaint may be held to be in default.

F. Response Shared with Complainant

The HRC shall serve a copy of the response or amended response to the complainant after redacting any confidential information.

X. Enforcement

G. Warning, Notice to Correct, and Technical Assistance

1. 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.

H. Administrative Penalty

1. 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.

2. Subsequent Violations

For subsequent violations, the HRC Director may increase the penalty to no more than \$100.00.

3. 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.

4. 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.

I. Mediation

Mediation refers to a process whereby the HRC staff acts as a neutral third-party to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal, and non-adversarial process with the objective of helping the disputed parties reach a mutual agreement. In mediation, decision-making authority rests with the parties. The role of the HRC as mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving, and exploring resolution alternatives.

Mediation may be initiated at any time after allegations of a violation are presented to the HRC. Either party may make a request to the HRC for mediation. Upon receipt of a request for mediation, or on its own initiative where the HRC determines that

mediation might be productive, the HRC shall ascertain if all parties agree to attempt resolution through mediation. If all parties to the dispute or all parties concerned with a specific issue in the dispute agree to mediation, the HRC shall appoint a staff member to act as a neutral mediator and attempt to resolve the dispute through mediation.

J. Investigations

The HRC, in consultation with the Mayor's Office of Housing and Community Development, is authorized to take appropriate steps to enforce this Article and coordinate enforcement, including the investigation of any possible violations of this Article.

1. Length of Time of Investigation

Staff shall endeavor to complete the investigation within 30 days of the date of receipt of the housing provider's response. If the scope of the investigation and the availability of witnesses require a longer investigation, the HRC shall notify the parties. Any party may request to mediate upon the agreement of all parties.

2. Investigation Plan

Staff shall create a written investigation plan specifying the names of any witnesses to be interviewed, documents to request, and/or sites to be visited.

3. Witness Interviews

Staff shall create a mutually convenient schedule for interviewing witnesses. Interviews are informal in nature. HRC staff may also obtain information from witnesses by written interrogatories or other means of contact.

4. Document Review

HRC staff may require any person or company to produce relevant documents.

5. Subpoena Power

The HRC may subpoena any person or company to provide testimony or documents relevant to the case who fails or refuses to voluntarily cooperate with the investigation.

6. Consultation with MOHCD

HRC staff shall consult with the MOHCD at the outset of the investigation, prior to the conclusion of the investigation, and at any other stage during the investigation the HRC regards as necessary.

7. Conclusion of Investigation

HRC staff shall submit the conclusion of the investigation to the Director for action.

K. Determination

1. Director's Action

After reviewing the complete investigation file, the Director of the HRC shall do one of the following:

- a. Issue a determination that a violation has occurred. The determination shall consist of written findings, and where authorized by law, order any appropriate relief; or
- b. Return the file to the staff member with instructions for further investigation and analysis; or
- c. Decide that a determination of a violation is not in order and direct the staff member to administratively close the complaint.

2. Notification

The HRC shall serve copies of the Director's determination to all parties within 10 days of the Director's action.

XI. Appeal

Parties will have the right to appeal as provided in Article 49 of the Police Code. An appeal process will be set forth in a future version of the Rules.

If there is no appeal of the Director's determination of a violation, then that determination shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the housing provider against the City regarding the Director's determination of a violation.

XII. Severability

These rules shall be construed so as not to conflict with applicable local, state, or federal laws, rules or regulations. In the event that a court or an agency of competent jurisdiction holds that a local, state or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of these rules or the application thereof to any person or circumstances, it is the intent of the Commission that the court or agency sever such clause, sentence, paragraph or section so that the remainder of these rules shall remain in effect.