

By Council Member Powers, the Public Advocate (Mr. Williams), Council Members Rivera, Ayala, Williams, Sanchez, Hudson, Krishnan, Abreu, Brewer, Joseph, De La Rosa, Hanif, Restler, Gutiérrez, Riley, Bottcher, Won, Cabán, Feliz, Stevens, Marte, Avilés, Narcisse, Richardson Jordan, Ossé, Nurse, Farías, Mealy, Barron and Louis (in conjunction with the Manhattan Borough President, Brooklyn Borough President, Bronx Borough President and Queens Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting housing discrimination on the basis of arrest record or criminal history.

Be it enacted by the Council as follows:

Section 1. Section 8-107 of title 8 of the administrative code of the city of New York is amended by adding a new subdivision 5-a to read as follows:

5-a. Protections based on arrest record and criminal history; housing. a. For purposes of this subdivision, the term “criminal history” includes records of an individual's

(1) Currently pending criminal cases;

(2) Convictions, including unsealed violations, or any conviction that resulted in a sentence involving fines, incarceration or other penalties arising from a verdict or plea of guilty or nolo contendere, a suspended sentence, a sentence of probation, or a sentence of unconditional discharge, and convictions that have been expunged, the subject of an executive pardon, the subject of a certificate of relief from disabilities, or otherwise legally nullified or vacated;

(3) Adjudications of juvenile delinquency or youthful offender adjudications; and

(4) Any records that have been sealed.

b. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof, or any real estate broker or agent or employee thereof

to:

(1) Refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person such a housing accommodation or an interest therein because of such person's arrest record or criminal history;

(2) Discriminate against any person in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith, because of such person's arrest record or criminal history;

(3) Represent to any person that, because of such person's arrest record or criminal history, any housing accommodation or an interest therein is not available for inspection, sale, rental or lease when in fact it is available to such person;

(4) Declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination in housing based on a person's arrest record or criminal history; or

(5) Make any inquiry or statement related to arrest record or criminal history in connection with the prospective or continued purchase, rental, or lease of a housing accommodation. Prohibited inquiries include any question communicated to an individual in writing or otherwise, directly or indirectly, searches of publicly available records, criminal background checks, or any other conduct that gathers arrest record or criminal history information. If a covered entity uses consumer credit reports to screen applicants, it shall not take any adverse action based on arrest record or criminal history information contained in such report.

c. Nothing in paragraph b shall restrict a covered entity from taking any lawful adverse

action against a current occupant for reasons other than a person's arrest record or criminal history, including the person's acts of physical violence against persons or property on the premises and other acts that would adversely affect the health, safety, or welfare of other residents, or excuse a covered entity from complying with applicable laws relating to victims of domestic violence, sex offenses or stalking.

d. Paragraph b shall not apply to the following:

(1) Actions taken by a covered entity to exclude a person from a housing accommodation based on the person's arrest record or criminal history where such exclusion is required pursuant to any federal, state, or local law or rule or regulation, provided that the covered entity shall provide the person a citation to the law, rule or regulation that requires such action.

(2) Actions taken by a covered entity pursuant to any federal, state or local law or rule or regulation that requires criminal background checks for housing eligibility, provided that prior to taking any adverse action that is not required by such law, the covered entity shall comply with paragraphs e and f; and

(3) Inquiries into the New York sex offense registry maintained by the state division of criminal justice services pursuant to section 168-b of the correction law, or adverse actions taken by a covered entity against a person listed publicly on such registry, provided that prior to taking any adverse action that is not required by such law, the covered entity shall comply with paragraphs e and subparagraphs (1) and (2) of paragraph f.

e. Notice of inquiry. Except where providing notice would conflict with a requirement of federal or state law, rule or regulation, prior to any inquiry into, gathering of, or use of criminal history information a covered entity must:

(1) Notify an individual in writing of the inquiry; and

(2) Provide the individual a reasonable amount of time to withdraw their application for housing, not to exceed three days.

f. Fair housing process. Except where following this process would conflict with a requirement of federal or state law, rule or regulation, after providing notice, and prior to any adverse action based on arrest record or criminal history, the covered entity shall provide:

(1) A written copy of the inquiry on which the intended adverse action is based and allow the person a reasonable amount of time of at least five business days, during which the covered entity must hold the housing unit open, to dispute the accuracy of the inquiry and respond with rebutting or mitigating information prior to the denial of the person's housing application.

(2) A copy of supporting documents that were reviewed, and a statement of the legitimate, non-discriminatory interest of the covered entity in protecting property and the safety and welfare of others;

(3) A copy of the analysis and the covered entity's reasons for intending to take adverse action against such person in a manner to be determined by the commission, identifying which of the following fair housing factors were taken into account:

(A) The time that has elapsed since the date of the offense;

(B) The age of the individual at the time of the offense;

(C) Evidence of good tenant history;

(D) Any additional information produced by an individual or on their behalf, in regards to their rehabilitation or good conduct, including but not limited to history of conduct in the community;

(E) The seriousness of the person's offense; and

(F) The legitimate interest of the owner in protecting property, and the safety and welfare

of specific individuals.

g. The requirements of paragraphs e and f shall be satisfied where a covered entity follows a substantially similar process under federal, state or local law, regulations or rules that provides notice and an opportunity for the person to submit rebutting information before the actual denial of a housing accommodation.

h. Paragraph b shall not apply to the sale or rental of:

(1) A housing accommodation, other than a publicly-assisted housing accommodation, in a building that contains housing accommodations for not more than two families living independently of each other, if the owner or members of the owner's family reside in one of such housing accommodations; or

(2) A room or rooms in a housing accommodation, other than a publicly-assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

i. To the extent permitted by law, a covered entity's compliance with this subdivision shall not constitute a basis for liability under other laws.

§ 2. This local law shall take effect 200 days after it becomes law, except that the commission may take such actions as are necessary to implement this local law, including the promulgation of rules, before such date.

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