



MEMORANDUM

TO: Mayor and Council Members

FROM: Rosie Truelove, Director Housing and Planning Department

DATE: March 28, 2022

SUBJECT: Response to Resolution No. 20200611-094: Tenant selection policies and procedures for individuals with prior convictions or evictions

The purpose of this memorandum is to provide an update on [Resolution No. 20200611-094](#) regarding Fair Chance Housing. On June 11, 2020, Council directed staff to draft tenant selection criteria for rental properties participating in the Austin Housing Finance Corporation's (AHFC) Rental Housing Development Assistance (RHDA) Program. These criteria should establish how landlords consider an individual's felony and misdemeanor background when applying for residency at an AHFC-assisted property. The goal of the tenant selection criteria is to ensure more fair housing choice for residents and residents returning to the community. These policies would apply on a going-forward basis to developments funded through the RHDA Program. Council also instructed staff to explore a tenant selection policy regarding eviction history.

On September 29, 2020, staff hosted an information session which included representatives from Building and Strengthening Tenant Action (BASTA), Texas Rio Grande Legal Aide (TRLA), and the Austin/Travis County Reentry Roundtable. Staff presented the current tenant selection policy requiring all participating developments to limit any criminal history look-back period to no more than seven years. Representatives from the Reentry Roundtable presented the recommendations for criminal history tenant selection, and several individuals who have experienced an inability to access rental housing because of criminal history presented their personal stories. Representatives from BASTA and TRLA presented research from other jurisdictions that have implemented an eviction history tenant selection policy. Following the presentations and a question-and-answer period, staff announced that the RHDA Guidelines would be amended to incorporate these new policies following additional conversations with the public.

In October 2020, staff met with several members of the development community to discuss tenant selection policies. Staff collected current tenant selection policies from the Housing Authority of the City of Austin (HACA), a prominent non-profit developer of affordable housing and a prominent for-profit developer of affordable housing. Staff reviewed these policies with the Reentry Roundtable template and identified some areas of commonality. In November 2020, staff presented the RHDA Guidelines update, including the revised tenant selection policy, to City Council's Housing and Planning Committee and announced the guidelines were available through the SpeakUp Austin public engagement website.

*The City of Austin is committed to compliance with the American with Disabilities Act.
Reasonable modifications and equal access to communications will be provided upon request.*

In December 2020, staff hosted an information session to review all the proposed revisions to the RHDA Guidelines, including the revised tenant selection policy.

Staff received several comments through the SpeakUp Austin page. Staff has amended the proposed revisions and presents the final tenant selection policy as attached to this memorandum. This tenant selection policy will be attached to the RHDA Guidelines. All developments awarded funding through the program must attach the Tenant Selection Policy and Criminal Background Screening guide to every lease, as a requirement of the RHDA loan. The requirements of the RHDA program are monitored by the Housing and Planning Department. If a development fails to comply with the requirements of the RHDA loan, they would be in default and the loan may become due immediately.

The Resident Selection Policies and Procedures can be found in Section XI. B. and are listed below:

B Resident Selection Policies and Procedures.

- 1 Tenants shall be selected from a written waiting list in chronological order. In the case of units set aside for Continuum of Care, Property Owners shall accept referrals exclusively from the Coordinated Assessment system maintained by the Ending Community Homeless Coalition (ECHO). If a referral is not made within 30 days of notifying ECHO of the vacancy, units may be filled via a development waiting list for other low-income tenants; however, new vacancies shall be reported to ECHO for referral until the commitment to provide Continuum of Care units has been met.
- 2 Property owners shall have written tenant selection procedures and policies that:
 - a Shall be consistent with the purpose of providing housing for very low- and low-income families.
 - b Shall be reasonable and comply with applicable eligibility and acceptance requirements.
 - c Meet the housing needs of families and recipients of Housing Choice Voucher Program assistance (formerly "Section 8").
 - d Shall be available and posted to the property website.
 - e Follow the *Texas Criminal Background Screening Guide for Rental Housing Providers*, published by the Austin/Travis County Reentry Roundtable to screen potential tenants:
 - i Only criminal convictions shall be taken into consideration in the criminal background screening process.
 - ii Criminal convictions shall be screened from the date of conviction with lookback periods according to the Criminal Background Screening Template attached to the Loan.
 - iii Only those criminal convictions listed on the Criminal Background Screening Template (Appendix B) shall be considered for the criminal background screening process.
 - iv Where a development receives funding from the State of Texas or HUD and an offense has been identified for heightened scrutiny, including a lifetime ban, the higher level of scrutiny will apply.
 - v The Criminal Background Screening Template shall be attached to each lease and signed by each prospective tenant upon application for housing.
 - vi Applicants shall be provided an opportunity for individualized review if the date of conviction is within the designated lookback period.

- vii During the Individualize Further Review, Property Owner shall consider:
- Applicant's age at time of offense,
 - Length of time since the offense was committed,
 - Community ties and support,
 - References and other supporting recommendations,
 - Rehabilitation efforts,
 - Further explanation of the offense,
 - Whether multiple convictions stemmed from a single incident or multiple incidents, and
 - Requests for reasonable accommodations.
- 3 Applicants shall not be denied based on eviction history if:
- a Eviction proceedings resulted in a dismissal or judgement for the applicant,
 - b Eviction was settled with no judgement more than 1 year before application, or
 - c Judgement against tenant was more than 3 years before application, except if the applicant was evicted from a community owned by same management company.
- 4 Applicant shall not be denied solely on the basis of credit history, such as:
- a Insufficient rental history,
 - b Insufficient credit history or credit score, or
 - c Household income is less than three times the rent without providing an opportunity for applicant to demonstrate a history of successful rent payment at the assigned amount.
- 5 In the event of a rejected application for rental housing, Property Owner shall give prompt written notification of the rejection and the basis for the decision.

For additional questions, please contact Rosie Truelove Rosie.Truelove@austintexas.gov; 512.974.3064.

cc: Spencer Cronk, City Manager
J. Rodney Gonzales, Assistant City Manager

Tenant Selection Policy and Criminal Background Screening

January 1, 2021

The following Criminal Background Screening will be applied when screening applicants for residency:

1. Only criminal **convictions** (not arrests) shall be considered in the criminal background screening process.
2. Convictions shall be determined by the identified offense described in the table below and the corresponding classification. Look-back periods shall be determined by the residency of the property (Family /Senior or Single Room Occupancy)
3. Look-back periods run from the date of conviction. Screening for any category of offense extends, therefore, only for as long as the number of years from the date of conviction specified below:

TYPE	DESCRIPTION	CLASSIFICATION	Family	SRO
Crimes Against Persons and Family	Murder	Felony: Capital, First, Second	Lifetime	5 Years
	Manslaughter	Felony: Second	Lifetime	5 Years
	Criminal Negligent Homicide	Felony: State Jail	5 Years	None
	Kidnapping, Abduction, Trafficking, Smuggling	Felony: First, Second, Third	Lifetime	5 Years
	Assault, Aggravated Assault, Injury to a Child, Elderly Individual, or Disabled Individual	Felony: First, Second, Third	5 Years	3 Years
	Assault, Injury to a Child, Elderly Individual, or Disabled Individual	Felony: State Jail. Misdemeanor: A, B	3 Years	1 Year
	Forcible Sex Offenses	Felony: First, Second, Third	Lifetime	5 Years
	Non-Forcible Sex Offenses	Felony: State Jail. Misdemeanor: A, B	5 Years	1 Year
	Deadly Conduct (with a Firearm), Terroristic Threat	Felony: Third, State Jail	5 Years	3 Years
	Deadly Conduct, Terroristic Threat	Misdemeanor: A, B	3 Years	1 Year
Crimes Against Property	Arson Related Offense	Felony: First, Second, Third, State Jail	Lifetime	5 Years
	Destruction/Damage/Vandalism of Property	Felony: First, Second, Third, State Jail	5 Years	1 Year
	Armed Robbery Offenses	Felony: First	5 Years	3 Years
	Robbery Offenses (no weapon involved)	Felony: Second	3 Years	1 Year
	Burglary (of habitation)	Felony: First, Second	5 Years	3 Years
	Burglary	Felony: Third, State Jail	3 Years	1 Year
	Criminal Trespass (of habitation)	Misdemeanor: A	1 Year	None
	Theft, Stolen Property, Fraud Related Offense	Felony: First, Second, Third, State Jail	3 Years	1 Year

TYPE	DESCRIPTION	CLASSIFICATION	Family	SRO
Crimes Against Society	Prostitution Related Offenses	Felony: First, Second, Third, State Jail	3 Years	1 Year
	Stalking	Felony: Second, Third	3 Years	1 Year
	Drug Manufacture, Distribution, Possession, Possession with Intent to Distribute	Felony: First, Second, Third	5 Years	3 Years
	Drug Manufacture, Distribution, Possession, Possession with Intent to Distribute	Felony: State Jail. Misdemeanor: A, B	1 Year	N one
	DUI and/or DWI Related Offenses	Felony: Third, State Jail	1 Year	None

4. Where an applicant has multiple offenses, the look-back periods shall run concurrently.
5. Offenses not listed shall not constitute justification for denial of housing. Where a conviction occurred outside of the State of Texas, property owners/managers shall use their best judgement to interpret the conviction according one of the descriptions above.
6. Where an offense can be understood to fall under more than one category, the higher lookback period shall be used. Where a development receives funding from the State of Texas or HUD and an offense has been identified for heightened scrutiny, including a lifetime ban, the higher level of scrutiny will apply.
7. Where an applicant has been denied based upon an offense that occurred within the specified lookback period, the applicant shall be automatically afforded an opportunity for individualized review. With the statement of denial, the property owner shall instruct the applicant of the opportunity for appeal and individualized review. This notice shall include:
 - a. a description of the appeal process,
 - b. contact information for scheduling the individualized review,
 - c. instructions for providing supporting documentation, and
 - d. an approximate timeline for the completion of the appeal.
8. After the completion of the individualized review, the property owner shall inform the applicant of the result of the appeal.

Signing this acknowledgement indicates that you have had the opportunity to review the above Criminal Background Screening. If you do not meet the criteria set forth, or if you provide inaccurate or incomplete information, your application will be rejected. Signing this acknowledgement authorizes the property manager to run a Criminal Background Screening check as part of your rental application.

Signature_____

Date_____