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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to fair chance housing; creating Chapter 14.09 in the Seattle Municipal Code to regulate the use of arrest and conviction records in rental housing; and authorizing the Seattle Office for Civil Rights to enforce the regulations set out in this new chapter.

WHEREAS, the U.S. Department of Justice has estimated one in every three adults in the United States has either an arrest or conviction record and;

WHEREAS, the Center for American Progress reports that nearly half of all children in the U.S. have one parent with a criminal record; and

WHEREAS, a study by the Vera Institute of Justice has shown that people with stable housing are more likely to successfully reintegrate into society and are less likely to reoffend; and

WHEREAS, individuals and parents who have served their time must be able to secure housing if they are to re-enter into society to successfully rebuild their lives and care for their families; and

WHEREAS, African Americans are 3.4% of Washington's population but account for nearly 18.4% of Washington's prison population;¹ Latinos are 11.2% of Washington's population but account for 13.2% of Washington's prison population;² and Native Americans are 1.3% of the state population but account for 4.7% of Washington's prison population;³ and

¹ <http://www.ofm.wa.gov/pop/census2010/default.asp#demo>; <http://www.doc.wa.gov/docs/publications/reports/100-QA001.pdf>
² <http://www.ofm.wa.gov/pop/census2010/default.asp#demo>; <http://www.doc.wa.gov/docs/publications/reports/100-QA001.pdf>
³ <http://www.ofm.wa.gov/pop/census2010/default.asp#demo>; <http://www.doc.wa.gov/docs/publications/reports/100-QA001.pdf>

1 WHEREAS racial inequities in the criminal justice system are compounded by racial bias in the
2 rental applicant selection process as demonstrated by fair housing testing conducted by the
3 Seattle Office for Civil Rights in 2013 that found that 64% of tests showed evidence of different
4 treatment based on race, including some cases where African American applicants were told
5 more often than their white counterparts they would have to undergo a criminal background
6 check as part of the screening process; and

7 WHEREAS, studies show after 4 to 7 years where no re-offense has occurred, a person with a
8 prior conviction is no more likely to commit a crime than someone who has never had a
9 conviction;⁴ and

10 WHEREAS, research shows higher recidivism occurs within the first two years of release and are
11 mitigated when individuals have access to safe and affordable housing and employment;⁵ and

12 WHEREAS, the City of Seattle has developed a Race and Social Justice Initiative (RSJI) to
13 eliminate institutional racism and create a community where equity in opportunity exists for
14 everyone; and

15 WHEREAS, the City's Office for Civil Rights (OCR) works to advance civil rights and end
16 barriers to equity; and

17 WHEREAS, in 2010, residents of Sojourner Place Transitional Housing, Village of Hope and
18 other community groups called on the City to address barriers to housing faced by people with
19 prior records; and

⁴ Kurlychek, et al. "Scarlet Letters & Recidivism: Does An Old Criminal Record Predict Future Criminal Behavior?" (2006) and "'Redemption' in an Era of Widespread Criminal Background Checks," *NIJ Journal*, Issue 263 (June 2009), at page 10 - preliminary study with group of first-time 1980 arrestees in New York- the findings depend on the nature of the prior offense and the age of the individual.

⁵ "Tenant Screening in an Era of Mass Incarceration: A Criminal Record is No Crystal Ball" by Merf Ehman and Anna Reosti

1 WHEREAS, in response, the Seattle Office for Civil Rights and the Seattle Human Rights
2 Commission held two public forums in 2010 and 2011 bringing together over 300 people
3 including community members with arrest and conviction records, landlords and employers to
4 share their concerns; and

5 WHEREAS, in 2013, the City passed the Seattle Jobs Assistance Ordinance, now titled the Fair
6 Chance Employment Ordinance to address barriers in employment; and

7 WHEREAS, since 2013, the Office of Housing has worked with nonprofit housing providers to
8 share best practices in tenant screening to address racial inequities; and

9 WHEREAS, in September 2014 the Council adopted Resolution 31546, in which the Mayor and
10 Council jointly convened the Seattle Housing Affordability and Livability Agenda (HALA)
11 Advisory Committee to evaluate potential strategies to make Seattle more affordable, equitable,
12 and inclusive; and in particular to promote the development and preservation of affordable
13 housing for residents of the City; and

14 WHEREAS, in July 2015, HALA published its Final Advisory Committee Recommendations
15 and the Mayor published *Housing Seattle: A Roadmap to an Affordable and Livable City*, which
16 outlines a multi-prong approach of bold and innovative solutions to address Seattle's housing
17 affordability crisis; and

18 WHEREAS, in October 2015, the Mayor proposed and Council adopted Resolution 31622
19 declaring the City's intent to expeditiously consider strategies recommended by the Housing
20 Affordability Livability Agenda (HALA) Advisory Committee; and

21 WHEREAS, the Mayor's Housing and Affordability and Livability Agenda recommended that the
22 City address barriers to housing faced by people with criminal records and the Mayor responded
23 by creating a Fair Chance Housing Committee; and

1 WHEREAS, the Fair Chance Housing Committee provided input to the Seattle Office for Civil
2 Rights on a legislative proposal to address these barriers; and

3 WHEREAS, in 2016, the Department of Housing and Urban Development (HUD) issued
4 guidance on the application of the Fair Housing Act to the use of arrest and conviction records in
5 rental housing, stating that a housing provider may be in violation of fair housing laws if their
6 policy or practice does not serve a substantial, legitimate, nondiscriminatory interest due to the
7 potential for criminal record screening to have a disparate impact on African American and other
8 communities of color; and

9 WHEREAS, in 2016, the Seattle City Council passed Resolution 31669, affirming HUD'S
10 guidance and the work of the Mayor's Fair Chance Housing Committee; NOW, THEREFORE,

11 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

12 Section 1. A new chapter 14.09 The Use of Criminal Records in Housing is added to Title
13 14 of the Seattle Municipal Code as follows:

14
15 14.09.005 Short Title

16 This Chapter 14.09 shall constitute the "Fair Chance Housing Ordinance" and may be
17 cited as such.

18
19 14.09.010 Definitions

20 "Accessory dwelling unit" has the meaning defined in Chapter 23.84A.032's definition of
21 "Residential use".

22 "Adverse action" means refusing to engage in or negotiate a real estate transaction,
23 denying tenancy; or representing that such real property is not available for inspection, rental, or

1 lease when in fact it is so available; or failing or refusing to add a household member to an
2 existing lease; or expelling or evicting an occupant from real property or otherwise making
3 unavailable or denying a dwelling; or applying different terms, conditions, or privileges of a real
4 estate transaction, including but not limited to the setting of rates for rental or lease,
5 establishment of damage deposits or other financial conditions for rental or lease, in the
6 furnishing of facilities or services in connection with such transaction; or refusing or
7 intentionally failing to list real property for rent, or lease; or refusing or intentionally failing to
8 show real property listed for rent or lease; or refusing or intentionally failing to accept and/or
9 transmit any reasonable offer to lease, or rent real property; or terminating a lease, threatening,
10 penalizing, retaliating, engaging in unfair immigration related practices, or otherwise
11 discriminating against any person for any reason prohibited by Section 14.09.025.

12 "Aggrieved party" means a prospective occupant, a tenant or other person who suffers
13 tangible or intangible harm due to a person's violation of this Chapter 14.09.

14 "Arrest record" means information indicating that a person has been apprehended,
15 detained, taken into custody, held for investigation, or restrained by a law enforcement
16 department or military authority due to an accusation or suspicion that the person committed a
17 crime. Arrest records include pending criminal charges, where the accusation has not yet resulted
18 in a final judgment, acquittal, conviction, plea, dismissal, or withdrawal.

19 "Charging party" means any person who files a charge alleging a violation under this
20 Chapter 14.09, including the Director.

21 "City" means the City of Seattle.

22 "Commission" means the Seattle Human Rights Commission.

1 "Conviction Record" is meant to be consistent with chapter 10.97 RCW and means
2 information regarding a final criminal adjudication or other criminal disposition adverse to the
3 subject, including a verdict of guilty, a finding of guilty, or a plea of guilty or nolo contendere. A
4 criminal conviction record does not include any prior conviction that has been the subject of an
5 expungement, vacation of conviction, sealing of the court file, pardon, annulment, certificate of
6 rehabilitation, certificate of restoration of opportunity, deferred prosecution, or other equivalent
7 procedure based on a finding of the rehabilitation of the person convicted, or a prior conviction
8 that has been the subject of a pardon, annulment, or other equivalent procedure based on a
9 finding of innocence. It does include convictions for offenses for which the defendant received a
10 deferred or suspended sentence, unless the adverse disposition has been vacated or expunged.

11 "Criminal background check" means requesting or attempting to obtain, directly or
12 through an agent, an individual's Conviction Record or Criminal History Record Information
13 from the Washington State Patrol or any other source that compiles and maintains such records
14 or information.

15 "Date of disposition" means the date on which any criminal charge is initially resolved or
16 adjudicated, specifically including the imposition of a deferred sentence, stipulated order of
17 continuance, dispositional continuance, or any other initial resolution which may or may not later
18 result in dismissal or reduction of charges depending on subsequent events. Date of disposition
19 does not refer to ultimate resolution of the findings in the case or to any adjustment to findings
20 that may occur as a result of appeal, post-conviction litigation, post-disposition motions, or
21 agreement to continue for dismissal or reduction of charges.

22 "Date of rental application" means the date and time when a landlord receives a rental
23 application, whether submitted through the mail, electronically, or in person.

1 “Department” means the Seattle Office for Civil Rights and any division therein.

2 “Detached accessory dwelling unit” has the meaning defined in Chapter 23.84A.032’s
3 definition of “Residential use”.

4 "Director" means the Director of the Seattle Office for Civil Rights or the Director's
5 designee.

6 "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of
7 which it is a part, and in addition means any person designated as representative of the owner,
8 lessor, or sublessor including, but not limited to, an agent, a resident manager, or a designated
9 property manager.

10 A "legitimate business reason" shall exist when the policy or practice is necessary to
11 achieve a substantial, legitimate, nondiscriminatory interest. To determine such an interest, a
12 landlord must demonstrate, through reliable evidence, a nexus between the policy or practice and
13 resident safety and/or protecting property, in light of the following factors:

- 14 a. the nature and severity of the conviction; and
15 b. the number and types of convictions; and
16 c. the time that has elapsed since the date of conviction; and
17 d. age of the individual at the time of conviction; and
18 e. evidence of good tenant history before and/or after the conviction occurred; and
19 f. any verifiable information related to the individual's rehabilitation, good conduct, and
20 facts or circumstances surrounding the conviction, provided by the individual, if the individual
21 chooses to do so.

22 "Person" means one or more individuals, partnerships, organizations, trade or
23 professional associations, corporations, legal representatives, trustees, trustees in bankruptcy and

1 receivers. It includes any owner, lessee, proprietor, manager, agent or employee, whether one or
2 more natural persons, and any political or civil subdivision or agency or instrumentality of the
3 City.

4 "Prospective occupant" means any person who seeks to lease, sublease, or rent real
5 property.

6 "Respondent" means any person who is alleged or found to have committed a violation of
7 this Chapter 14.09.

8 "Tenant" means a person occupying or holding possession of a building or premises
9 pursuant to a rental agreement.

10 "Verifiable information" means any information produced by the prospective occupant or
11 the tenant, or produced on their behalf, with respect to their rehabilitation or good conduct
12 including but not limited to written or oral statement from the prospective occupant or the tenant;
13 or written or oral statement from a current or previous employer; or written or oral statement
14 from a current or previous landlord; written or oral statement from a member of the judiciary or
15 law enforcement, parole or probation officer or person who provides similar services; or written
16 or oral statement from a member of the clergy, counselor, therapist, social worker, community or
17 volunteer organization or person or institution who provides similar services; or certificate of
18 rehabilitation; or certificate of completion or enrollment in an educational or vocational training
19 program, including apprenticeships programs; or certificate of completion or enrollment in a
20 drug or alcohol treatment program; or certificate of completion or enrollment in a rehabilitation
21 program.

1 14.09.015 Housing in Seattle

2 A person is covered by this Chapter 14.09 when the physical location of the housing is
3 within the geographic boundaries of the City.

4

5 14.09.020 Notice to Prospective Occupants and Tenants

6 If the landlord screens prospective occupants for criminal records, the landlord shall
7 provide written notice of screening criteria on all applications for rental properties. The written
8 notice shall include that the landlord will consider for tenancy qualified applicants with criminal
9 histories and applicants may provide any verifiable information related to an individual's
10 rehabilitation, good conduct, and facts or circumstances surrounding the conviction. The
11 Department shall adopt a rule or rules to enforce this Section 14.09.20.

12

13 14.09.025 Prohibited Use of Arrest and Conviction Records

14 A. It is an unfair practice for any person to:

15 1. Advertise, publicize, or implement any policy or practice that automatically or
16 categorically excludes all individuals with any arrest or conviction record from any housing that
17 is located within the City.

18 2. Require disclosure, inquire about, or carry out an adverse action in housing, based
19 on an arrest record of a prospective occupant, a tenant or a member of their household. An arrest
20 is not proof that a person has engaged in unlawful conduct.

21 3. Require disclosure, inquire about, or take an adverse action in housing, based on a
22 conviction of a prospective occupant, a tenant or a member of their household that are from

1 juvenile records; convictions that have been expunged, sealed, or vacated; and/or convictions
2 that, from the date of disposition, antedate the rental application by more than two years.

3 4. Carry out an adverse action based on a conviction record of a prospective
4 occupant, a tenant or a member of their household, unless the landlord has a legitimate business
5 reason for taking such action.

6 B. If a landlord takes an adverse action based on a legitimate business reason, the
7 landlord shall provide written notice of the adverse action to the prospective occupant or the
8 tenant and state the specific record or records that were the basis for the adverse action.

9 C. Per RCW 59.18.257, if a consumer report is used by the landlord as part of the
10 screening process the landlord must provide the name and address of the consumer reporting
11 agency and the prospective occupant or the tenant's rights to obtain a free copy of the consumer
12 report in the event of a denial or other adverse action, and to dispute the accuracy of information
13 appearing in the consumer report.

14
15 14.09.030 Retaliation prohibited

16 A. No person shall interfere with, restrain, or deny the exercise of, or the attempt to
17 exercise, any right protected under this Chapter 14.09.

18 B. No person shall take any adverse action against any person because the person has
19 exercised in good faith the rights protected under this Chapter 14.09. Such rights include but are
20 not limited to the right to fair chance housing and regulation of the use of arrest and conviction
21 records in housing by this Chapter 14.09; the right to make inquiries about the rights protected
22 under this Chapter 14.09; the right to inform others about their rights under this Chapter 14.09;
23 the right to inform the person's legal counsel or any other person about an alleged violation of

1 this Chapter 14.09; the right to file an oral or written complaint with the Department for an
2 alleged violation of this Chapter 14.09; the right to cooperate with the Department in its
3 investigations of this Chapter 14.09; the right to testify in a proceeding under or related to this
4 Chapter 14.09; the right to refuse to participate in an activity that would result in a violation of
5 city, state or federal law; and the right to oppose any policy, practice, or act that is unlawful
6 under this Chapter 14.09.

7 C. No person shall communicate to a person exercising rights protected in this Section
8 14.09.025, directly or indirectly, his or her willingness to inform a government employee that the
9 person exercising rights protected under this Section 14.09.025 is not lawfully in the United
10 States.

11 D. No person shall report, or to make an implied or express assertion of a willingness to
12 report, the suspected citizenship or immigration status of a prospective occupant, tenant or
13 member of their household to a federal, state, or local Department because the prospective
14 occupant or the tenant has exercised a right under this Chapter Section 14.09.025.

15 E. It shall be a rebuttable presumption of retaliation if a landlord or any other person
16 takes an adverse action against a person within 90 days of the person's exercise of rights
17 protected in this Section 14.09.030. The landlord may rebut the presumption with clear and
18 convincing evidence that the adverse action was taken for a permissible purpose.

19 F. Proof of retaliation under this Section 14.09.030 shall be sufficient upon a showing
20 that a landlord or any other person has taken an adverse action against a person and the person's
21 exercise of rights protected in this Section 14.09.030 was a motivating factor in the adverse
22 action, unless the landlord can prove that the action would have been taken in the absence of
23 such protected activity.

1 G. The protections afforded under this Section 14.09.030 shall apply to any person who
2 mistakenly but in good faith alleges violations of this Chapter 14.09.

3 H. A complaint or other communication by any person triggers the protections of this
4 Section 14.09.030 regardless of whether the complaint or communication is in writing or makes
5 explicit reference to this Chapter 14.09.

6
7 14.09.035 Enforcement power and duties

8 A. The Department shall have the power to investigate violations of this Chapter 14.09,
9 as defined herein, and shall have such powers and duties in the performance of these functions as
10 are defined in this Chapter 14.09 and otherwise necessary and proper in the performance of the
11 same and provided for by law.

12 B. The Department shall be authorized to coordinate implementation and enforcement of
13 this Chapter 14.09 and shall promulgate appropriate guidelines or rules for such purposes.

14 C. The Director is authorized and directed to promulgate appropriate guidelines and rules
15 consistent with this Chapter 14.09 and the Administrative Code. Any guidelines or rules
16 promulgated by the Director shall have the force and effect of law and may be relied on by
17 landlords, prospective occupants, tenants, and other parties to determine their rights and
18 responsibilities under this Chapter 14.09.

19 D. The Director shall maintain data on the number of complaints filed pursuant to this
20 Chapter 14.09, demographic information on the complainants, the number of investigations it
21 conducts and the disposition of every complaint and investigation. The Director shall submit this
22 data to the Mayor and City Council every six months for the two years following the effective
23 date of Ordinance ****.

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14.09.040 – Violation

The failure of any person to comply with any requirement imposed on the person under this Chapter 14.09 is a violation.

14.09.045 - Charge—Filing.

A. An aggrieved person may file a charge with the Director alleging a violation. The charge shall be in writing and signed under oath or affirmation before the Director, one of the Department's employees, or any other person authorized to administer oaths. The charge shall describe the alleged violation and should include a statement of the dates, places and circumstances, and the persons responsible for such acts and practices. Upon the filing of a charge alleging a violation, the Director shall cause to be served upon the charging party a written notice acknowledging the filing, and notifying the charging party of the time limits and choice of forums provided in this chapter.

B. A charge shall not be rejected as insufficient because of failure to include all required information if the Department determines that the charge substantially satisfies the informational requirements necessary for processing.

C. A charge alleging a violation or pattern of violations under this chapter may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in a violation under this chapter.

1 14.09.050 - Time for filing charges.

2 Charges filed under this chapter must be filed with the Department within one year after
3 the alleged violation has occurred or terminated.

4

5 14.09.055 - Charge—Amendments.

6 A. The charging party or the Department may amend a charge:

7 1. To cure technical defects or omissions;

8 2. To clarify allegations made in the charge;

9 3. To add allegations related to or arising out of the subject matter set forth or attempted
10 to be set forth in the charge;

11 4. To add as a charging party a person who is, during the course of the investigation,
12 identified as an aggrieved person; or

13 5. To add or substitute as a respondent a person who was not originally named as a
14 respondent, but who is, during the course of the investigation, identified as a respondent. For
15 jurisdictional purposes, such amendments shall relate back to the date the original charge was
16 first filed.

17 B. The charging party may amend a charge to include allegations of retaliation which
18 arose after the filing of the original charge. Such amendment must be filed within one year after
19 the occurrence of the retaliation, and prior to the Department's issuance of findings of fact and
20 determination with respect to the original charge. Such amendments may be made at any time
21 during the investigation of the original charge so long as the Department will have adequate time
22 to investigate the additional allegations and the parties will have adequate time to present the

1 Department with evidence concerning the additional allegations before the issuance of findings
2 of fact and a determination.

3 C. When a charge is amended to add or substitute a respondent, the Director shall serve
4 upon the new respondent within twenty days:

5 1. The amended charge;

6 2. The notice required under section 14.09.060(A); and

7 3. A statement of the basis for the Director's belief that the new respondent is properly
8 named as a respondent. For jurisdictional purposes, amendment of a charge to add or substitute a
9 respondent shall relate back to the date the original charge was first filed.

10

11 14.09.060 - Notice of charge and investigation.

12 A. The Director shall promptly, and in any event within twenty (20) days of filing of the
13 charge, cause to be served on or mailed, by certified mail, return receipt requested, to the
14 respondent, a copy of the charge along with a notice advising the respondent of respondent's
15 procedural rights and obligations under this chapter. The Director shall promptly make an
16 investigation of the charge.

17 B. The investigation shall be directed to ascertain the facts concerning the violation
18 alleged in the charge, and shall be conducted in an objective and impartial manner.

19 C. During the period beginning with the filing of the charge and ending with the issuance
20 of the findings of fact, the Department shall, to the extent feasible, engage in settlement
21 discussions with respect to the charge. A pre-finding settlement agreement arising out of the
22 settlement discussions shall be an agreement between the charging party and the respondent and
23 shall be subject to approval by the Director. Each pre-finding settlement agreement is a public

1 record. Failure to comply with the pre-finding settlement agreement may be enforced under SMC
2 14.09.100.

3 D. During the investigation the Director shall consider any statement of position or
4 evidence with respect to the allegations of the charge which the charging party or the respondent
5 wishes to submit, including the respondent's answer to the charge. The Director shall have
6 authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, the
7 production of evidence including but not limited to books, records, correspondence or documents
8 in the possession or under the control of the person subpoenaed, and access to evidence for the
9 purpose of examination and copying, and conduct discovery procedures which may include the
10 taking of interrogatories and oral depositions.

11 E. The Director may require a fact finding conference or participation in another process
12 with the respondent and any of respondent's agents and witnesses and charging party during the
13 investigation in order to define the issues, determine which elements are undisputed, resolve
14 those issues which can be resolved, and afford an opportunity to discuss or negotiate settlement.
15 Parties may have their legal counsel present if desired.

16
17 14.09.065 - Procedure for investigations.

18 A. A respondent may file with the Department an answer to the charge no later than ten
19 (10) days after receiving notice of the charge.

20 B. The Director shall commence investigation of the charge within thirty (30) days after
21 the filing of the charge. The investigation shall be completed within one hundred (100) days after
22 the filing of the charge, unless it is impracticable to do so. If the Director is unable to complete
23 the investigation within one hundred (100) days after the filing of the charge, the Director shall

1 notify the charging party and the respondent of the reasons therefor. The Director shall make
2 final administrative disposition of a charge within one (1) year of the date of filing of the charge,
3 unless it is impracticable to do so. If the Director is unable to make a final administrative
4 disposition within one (1) year of the filing of the charge, the Director shall notify the charging
5 party and the respondent of the reasons therefor.

6 C. If the Director determines that it is necessary to carry out the purposes of this chapter,
7 the Director may, in writing, request the City Attorney to seek prompt judicial action for
8 temporary or preliminary relief to enjoin any violation pending final disposition of a charge.

9
10 14.09.070 - Findings of fact and determination of reasonable cause or no reasonable
11 cause.

12 A. The results of the investigation shall be reduced to written findings of fact and a
13 determination shall be made by the Director that there is or is not reasonable cause for believing
14 that a violation has been, is being or is about to be committed, which determination shall also be
15 in writing and issued with the written findings of fact. The findings and determination are
16 "issued" when signed by the Director.

17 B. The findings of fact and determination shall be mailed promptly to the respondent and
18 charging party.

19 C. Once issued to the parties, the Director's findings of fact, determination and order may
20 not be amended or withdrawn except upon the agreement of the parties or in response to an order
21 by the Commission after an appeal taken pursuant to Section 14.09.75; provided, that the
22 Director may correct clerical mistakes or errors arising from oversight or omission upon a
23 motion from a party or upon the Director's own motion.

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14.09.075 - Determination of no reasonable cause—Appeal from and dismissal.

A. If a determination is made that there is no reasonable cause for believing a violation under this chapter has been, is being or is about to be committed, the charging party may appeal such determination to the Commission within 30 days of the date the determination is signed by the Director by filing a written statement of appeal with the Commission. The Commission shall promptly deliver a copy of the statement to the Department and respondent and shall promptly consider and act upon such appeal by either affirming the Director's determination or, if the Commission believes the Director should investigate further, remanding it to the Director with a request for specific further investigation. In the event no appeal is taken, or such appeal results in affirmance or if the Commission has not decided the appeal within 90 days from the date the appeal statement is filed, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Department.

14.09.080 - Determination of reasonable cause—Conciliation.

A. If the Director determines that reasonable cause exists to believe that a violation has occurred, is occurring or is about to occur, the Director shall endeavor to eliminate the violation through efforts to reach conciliation. Conditions of conciliation may include, but are not limited to, the elimination of the violation, rent refunds or credits, reinstatement to tenancy, affirmative recruiting or advertising measures, payment of actual damages, and reasonable attorney's fees and costs or such other remedies that will carry out the purposes of this chapter. The Director may also require payment of a civil penalty as set forth in SMC 14.09.100.

1 B. Any post-finding conciliation agreement shall be an agreement between the charging
2 party and the respondent and shall be subject to the approval of the Director. The Director shall
3 enter an order setting forth the terms of the agreement which may include a requirement that the
4 parties report to the Director on the matter of compliance. Copies of such order shall be delivered
5 to all affected parties and shall be subject to public disclosure.

6 C. If conciliation fails and no agreement can be reached, the Director shall issue a written
7 finding to that effect and furnish a copy of the finding to the charging party and to the
8 respondent. Upon issuance of the finding, except a case in which a City department is a
9 respondent, the Director shall promptly cause to be delivered the entire investigatory file,
10 including the charge and any and all findings made, to the City Attorney for further proceedings
11 and hearing under this chapter pursuant to Section 14.09.085.

12
13 14.09.085 - Complaint and hearing.

14 A. Following submission of the investigatory file from the Director, the City Attorney
15 shall, except as set forth in subsection B of this section, prepare a complaint against such
16 respondent relating to the charge and facts discovered during the Department's investigation. The
17 City Attorney shall file the complaint with the Hearing Examiner in the name of the Department
18 and represent the interests of the Department at all subsequent proceedings.

19 B. If the City Attorney determines that there is no legal basis for a complaint to be filed
20 or proceedings to continue, a statement of the reasons therefor shall be filed with the
21 Department. The Director shall then dismiss the charge. Any party aggrieved by the dismissal
22 may appeal to the Commission.

1 C. The City Attorney shall serve a copy of the complaint on respondent and furnish a
2 copy of the complaint to the charging party and to the Department.

3 D. Within twenty (20) days of the service of such complaint upon it, the respondent shall
4 file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

5 E. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a
6 hearing date and give notice thereof to the Commission, the City Attorney and respondent, and
7 shall thereafter hold a public hearing on the complaint which shall commence no earlier than
8 ninety (90) days nor later than one hundred twenty (120) days from the filing of the complaint,
9 unless otherwise ordered by the Hearing Examiner.

10 F. After the complaint is filed with the Hearing Examiner, it may be amended only with
11 the permission of the Hearing Examiner, which permission shall be granted when justice will be
12 served and all parties are allowed time to prepare their case with respect to additional or
13 expanded charges.

14 G. The hearing shall be conducted by the Hearing Examiner, a deputy hearing examiner
15 or a hearing examiner pro tempore appointed by the Hearing Examiner from a list approved by
16 the Commission, sitting alone or with representatives of the Commission if any are designated.
17 Such hearings shall be conducted in accordance with written rules and procedures consistent
18 with this chapter and the Administrative Code, Ch. 3.02 SMC.

19 H. The Commission, within thirty (30) days after receiving notice of the date of hearing
20 from the Hearing Examiner, at its discretion, may appoint two (2) Commissioners who have not
21 otherwise been involved in the charge, investigation, fact finding, or other resolution and
22 proceeding on the merits of the case, who have not formed an opinion on the merits of the case,
23 and who otherwise have no pecuniary, private or personal interest or bias in the matter, to hear

1 the case with the Hearing Examiner. Each Commissioner shall have an equal vote with the
2 Hearing Examiner. The Hearing Examiner shall be the chairperson of the panel and make all
3 evidentiary rulings. The Hearing Examiner shall resolve any question of previous involvement,
4 interest or bias of an appointed Commissioner in conformance with the law on the subject. Any
5 reference in this chapter to a decision, order, or other action of the Hearing Examiner shall
6 include, when applicable, the decision, order, or other action of a panel constituted under this
7 subsection.

8
9 14.09.090 - Decision and order

10 A. Within 30 days after conclusion of the hearing, the Hearing Examiner shall prepare a
11 written decision and order, file it as a public record with the City Clerk, and provide a copy to
12 each party of record and to the Department.

13 B. Such decision shall contain a brief summary of the evidence considered and shall
14 contain findings of fact, conclusions of law upon which the decision is based, and an order
15 detailing the relief deemed appropriate, together with a brief statement of the reasons supporting
16 the decision.

17 C. In the event the Hearing Examiner or a majority of the panel composed of the Hearing
18 Examiner and Commissioners determines that a respondent has committed a violation under this
19 Chapter 14.09, the Hearing Examiner may order the respondent to take such affirmative action or
20 provide for such relief as is deemed necessary to correct the violation, effectuate the purpose of
21 this Chapter 14.09, and secure compliance therewith, including but not limited to, rent refund or
22 credit, reinstatement to tenancy, affirmative recruiting and advertising measures, reasonable
23 attorney's fees and costs, or to take such other action as in the judgment of the Hearing Examiner

1 will carry out the purposes of this Chapter 14.09. An order may include the requirement for a
2 report on the matter of compliance.

3 D. The Department in the performance of its functions may enlist the aid of all
4 departments of City government, and all said departments are directed to fully cooperate with the
5 Department.

6
7 14.09.095 – Appeal from Hearing Examiner order

8 A. The respondent may obtain judicial review of the decision of the Hearing Examiner by
9 applying for a Writ of Review in King County Superior Court within 30 days from the date of
10 the decision in accordance with the procedure set for in chapter 7.16 RCW, other applicable law,
11 and court rules.

12 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
13 sought in compliance with this Section 14.09.095.

14
15 14.09.100 Civil Penalties in cases alleging violations of this chapter.

16 A. In cases either decided by the Director or brought by the City Attorney alleging a
17 violation filed under this chapter, in addition to any other award of damages or grant of
18 injunctive relief, a civil penalty may be assessed against the respondent to vindicate the public
19 interest, which penalty shall be payable to the City of Seattle and the Department. Payment of the
20 civil penalty may be required as a term of a conciliation agreement entered into under SMC
21 14.09.080(A) or may be ordered by the Hearing Examiner in a decision rendered under SMC
22 14.09.090.

23 B. The civil penalty assessed against a respondent shall not exceed the following amount:

1 1. Eleven Thousand Dollars (\$11,000) if the respondent has not been determined to have
2 committed any prior violation;

3 2. Twenty seven Thousand Five Hundred Dollars (\$27,500) if the respondent has been
4 determined to have committed one (1) other violation during the five (5) year period ending on
5 the date of the filing of this charge; or

6 3. Fifty five Thousand Dollars (\$55,000) if the respondent has been determined to have
7 committed two (2) or more violations during the seven (7) year period ending on the date of the
8 filing of this charge; except that if acts constituting the violation that is the subject of the charge
9 are committed by the same person who has been previously determined to have committed acts
10 constituting a violation, then the civil penalties set forth in subparagraphs 2 and 3 of subsection
11 B of this section may be imposed without regard to the period of time within which those prior
12 acts occurred.

13
14 14.09.105 - Enforcement of Department and Hearing Examiner orders and agreements.

15 A. In the event a City respondent fails to comply with any final order of the Director or of
16 the Hearing Examiner, a copy of the order shall be transmitted to the Mayor, who shall take
17 appropriate action to secure compliance with the final order.

18 B. In the event a respondent fails to comply with any final order issued by the Hearing
19 Examiner not directed to the City or to any City department, the Director, shall refer the matter
20 to the City Attorney, for the filing of a civil action to enforce such order.

21 C. Whenever the Director has reasonable cause to believe that a respondent has breached
22 a settlement or conciliation agreement, the Director shall refer the matter to the City Attorney for
23 filing of a civil action to enforce such agreement.

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14.09.110 Other legal requirements

A. This Chapter 14.09 shall not be interpreted or applied to diminish or conflict with any requirements of state or federal law, including Title VIII of the Civil Rights Act of 1968, the Federal Fair Credit Reporting Act, 15 U.S.C. 1681 et. seq., as amended, the Washington State Fair Credit Reporting Act, chapter 19.182 RCW, as amended, the Washington State Criminal Records Privacy Act, chapter 10.97 RCW, as amended. In the event of any conflict, state and federal requirements shall supersede the requirements of this Chapter 14.09.

B. This Chapter 14.09 shall not apply to an adverse action taken by a federally-funded landlord subject to federal regulations solely if the adverse action was due to any member of the household that is subject to a state lifetime sex offender registration requirement and/or convicted of manufacture or production of methamphetamine on the premises of federally assisted housing.

C. This Chapter 14.09 shall not prohibit landlords from taking an adverse action based on information obtained from a state sex offender registry.

D. This Chapter 14.09 shall not apply to buildings containing four or fewer living units in which the owner resides in one unit.

E. This Chapter 14.09 shall not apply to an accessory dwelling unit or detached accessory dwelling unit wherein the owner or person entitled to possession thereof maintains a permanent residence, home or abode on the same lot.

F. This Chapter 14.09 shall not be construed to discourage or prohibit landlords from adopting screening policies that are more generous to prospective occupants and tenants than the requirements of this Chapter 14.09.

1 G. This Chapter 14.09 shall not be construed to create a private civil right of action.

2

3 14.09.115 Severability

4 The provisions of this Chapter 14.09 are declared to be separate and severable. If any
5 clause, sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 14.09, or
6 the application thereof to any landlord, prospective occupant, tenant, person, or circumstance, is
7 held to be invalid, it shall not affect the validity of the remainder of this Chapter 14.09, or the
8 validity of its application to other persons or circumstances.

9 Section 2. This ordinance shall take effect and be in force six months after the signing of
10 the ordinance by the Mayor, to ensure there is adequate time for rule-making and any
11 adjustments in business practices needed.

DRAFT

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Passed by the City Council the _____ day of _____, 2017,
and signed by me in open session in authentication of its passage this ____ day of
_____, 2017.

President _____ of the City Council

Approved by me this _____ day of _____, 2017.

Edward B. Murray, Mayor

Filed by me this _____ day of _____, 2017.

Monica Martinez Simmons, City Clerk

(Seal)