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April 5, 2017

Erika Pablo
Civil Rights Strategic Advisor
City of Seattle
Office for Civil Rights
810 Third Avenue, Suite 750
Seattle, WA 98104-1627

Re: Opposition to the draft ordinance relating to fair chance housing

Dear Ms. Pablo:

I write on behalf of the Consumer Data Industry Association (CDIA) in opposition to the draft ordinance relating to fair chance housing for three primary reasons. First, the proposal could make apartment communities more susceptible to crime by arbitrarily assigning a mythical point of redemption at two years. Second, the bill takes away the ability of a landlord or property manager to consider arrests with pending charges, which threatens safety. Third, the proposal incorrectly measures the timeframe in which a landlord cannot consider convictions. The time should be measured from the date of release from incarceration, not from the date of disposition.

CDIA is an international trade association, founded in 1906, of more than 130 corporate members. Its mission is to enable consumers, media, legislators and regulators to understand the benefits of the responsible use of consumer data which creates opportunities for consumers and the economy. CDIA members provide businesses with the data and analytical tools necessary to manage risk. They help ensure fair and safe transactions for consumers, facilitate competition and expand consumers' access to a market which is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

CDIA was delighted to participate as a member of the mayor's Fair Chance Housing Committee. While the work of the committee was well-intentioned there are places where it never found common ground and we must object to the draft before us.

CDIA members are heavily regulated by the Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*, and its Washington equivalent, Wash. Code Ch. 19.182. The FCRA prohibits arrests from being reported by a CRA more than seven years while criminal convictions may remain reportable indefinitely.[1] Washington law allows for convictions to be reported for up to seven years. Wash. Code § 19.182.040(1)(e).

1. **The bill could make apartment communities more susceptible to crime by arbitrarily assigning a mythical point of redemption at two years.**

Under the proposal, a landlord or property manager cannot look back beyond two years in to an applicant's criminal conviction. 14.09.025.4. This limited lookback is built on a shaky foundation laid in the "whereas clauses" where the proposal attempts to find that "studies show after 4 to 7 years where no re-offense has occurred, a person with a prior conviction is no more likely to commit a crime than someone who has never had a conviction.[2]

This two-year limited lookback deeply contradicts federal and state law. Despite what is noted in the proposal, the two-year lookback is not supported by scientific research.

The Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*, and its Washington equivalent, Wash. Code Ch. 19.182, regulate criminal background checks for employment and residential screening. The FCRA prohibits arrests from being reported by a CRA more than seven years while criminal convictions may remain reportable indefinitely.[3] Washington law allows for convictions to be reported for up to seven years.[4]

The bigger challenge to the proposal is its lack of foundation in science. This proposal sets an arbitrary redemption date for convictions that is shorter than the time period established by federal or state law. No matter how much research is undertaken,

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[1] 15 U.S. Code § 1681c(a)(2), (5).

[2] Citing 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.

[3] 15 U.S. Code § 1681c(a)(2), (5).

[4] Wash. Code § 19.182.040(1)(e).

the search for a single bright redemption line is likely doomed to fail. Even the leading authors on papers seeking a redemption date seek such a date find false hope. Professors Alfred Blumstein and Kiminori Nakamura readily concede that "[t]hose with no prior record . . . are inherently less risky than those with a prior record."[5]

2. **The bill takes away the ability of a landlord to consider arrests with pending charges**

Arrests that are pending disposition are relevant to an employer considering an applicant's criminal history. A landlord seeking to rent to a staffer in April would surely be interested in an arrest in February for arson or burglary if that arrest has not yet resulted in a disposition. The proposal should not tie a landlord's hands by taking away a critical piece of a criminal history if it means keeping her other tenants safe from criminal acts.

The proposal does not meet other tenants' expectations. In the haste to prevent the consideration of arrests that have not resulted in a disposition, the proposal papers over the likely concern other tenants would have living in a building knowing that an accused burglar lives next door. That might not allow a neighbor to sleep well at night knowing that probable cause has been found to warrant a charge that could jeopardize her safety.

3. **The proposal should use a different measure for the timeframe in which a landlord cannot consider convictions**

We object to any limited lookback for criminal convictions. Landlords and property managers need to see and evaluate the full criminal history of an applicant to live in a rental property. However, if there is to be a limited lookback, the proposal incorrectly measures the timeframe in which a landlord cannot consider convictions. The time should start two years from the date of release from incarceration, not from the date of disposition. The propensity to commit crime remains high once a person is released from incarceration. If someone spends four years in prison for arson, that person is not automatically rehabilitated once he is released because he spent more than two years in prison. The more appropriate measure of time in which a landlord cannot consider convictions

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[5] Alfred Blumstein and Kiminori Nakamura, *Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences*, Oct. 2012, available at https://www.ncjrs.gov/pdffiles1/nij/grants/240100.pdf ("Blumstein & Nakamura, 2012"), 90.

4. Conclusion

We oppose the draft ordinance relating to fair chance housing for three primary reasons. First, the proposal could make apartment communities more susceptible to crime by arbitrarily assigning a mythical point of redemption at two years. Second, the bill takes away the ability of a landlord or property manager to consider arrests with pending charges, which threatens safety. Third, the proposal incorrectly measures the timeframe in which a landlord cannot consider convictions. The time should be measured from the date of release from incarceration, not from the date of disposition.

We hope that this information is helpful to you and we are happy to answer any questions you may have.

Sincerely,

Eric J. Ellman
Interim President and Chief Executive Officer