



# Seattle Office for Civil Rights

## Fair Chance Housing Ordinance, SMC 14.09 Frequently Asked Questions

The Fair Chance Housing Ordinance prohibits discrimination in housing against renters with arrest records, conviction records, or criminal history. The legislation caps a decade-long effort to address discrimination against people who have served their time, are seeking to provide for themselves and their families, and yet have faced barriers to accessing safe, stable housing.

The Seattle Office for Civil Rights (SOCR) is responsible for administering and enforcing this ordinance. SOCR conducts free, fair, and impartial investigations when someone believes there has been a violation of the law. SOCR does not provide legal advice or representation to parties involved in a claim. Compliance with the law is reached by SOCR playing a neutral role in process.

SOCR also provides free technical assistance to rental housing providers, community organizations, members of the public, and anyone else that is impacted by this law. This Frequently Asked Questions (FAQ) document addresses some of the most common questions about Seattle's Fair Chance Housing protections ([Seattle Municipal Code 14.09](#)).

If you are a **prospective renter, applicant, or tenant** and have a question that is not covered by this FAQ, please contact SOCR at 206-684-4500 or email us at [discrimination@seattle.gov](mailto:discrimination@seattle.gov). You may also contact us in these ways if you believe the law has been violated.

If you are an **owner, housing provider, property manager, or community advocate** and have a question that is not covered by this FAQ, please contact SOCR at 206-684-4500 or email us at [discriminationquestions@seattle.gov](mailto:discriminationquestions@seattle.gov).

Reasonable accommodations for disabilities and language interpretation are always available.

**IMPORTANT NOTE:** This FAQ should not be used as substitute for codes and regulations. The reader is responsible for compliance with all code and rule requirements.

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## A. OVERVIEW

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This section provides an overview of the ordinance, the effective date, and exclusions.

### 1. Why is the Fair Chance Housing Ordinance needed?

- **Increase racial equity in housing.** Fair Chance Housing aims to address the racially disproportionate impact that exclusionary tenant screening practices have on our communities.
- **Fair access to housing helps keep families together.** Nearly half of all children in the U.S. have one parent with a criminal record. Fair Chance Housing ensures that parents who have served their time can remain in their home, which provides for much needed stability.
- **Fair access to housing is the bedrock of a strong and inclusive community.** This legislation addresses gaps in housing access and ensures that people who have served their time and found employment can also find a safe and stable place to call home.

### 2. What does the Fair Chance Housing Ordinance do?

The Fair Chance Housing Ordinance, [Seattle Municipal Code \(SMC\) 14.09](#), prohibits any person from committing unfair practices against renters in the City of Seattle based on their arrest records, conviction records, or criminal history.

### 3. When does the Fair Chance Housing Ordinance go into effect?

The Seattle Office for Civil Rights (SOCR) will begin enforcement on **February 19, 2018**. Prospective occupants or tenants have a year from the date of the incident to file a claim with SOCR.

### 4. Does the Fair Chance Housing Ordinance apply in all instances?

No. The ordinance does not apply to:

- Single-family dwellings where the owner occupies part of the single-family dwelling.
- Accessory dwelling unit (ADU) or detached accessory dwelling unit (DADU) when the owner or person entitled to possession maintains a permanent residence on the same lot. An example of an ADU is a basement apartment or “mother-in-law” unit. These are separate living units with kitchen, sleeping, and bathroom facilities. They are smaller in size and appearance than the primary home and may have separate entrances. An example of a DADU is a backyard cottage.

No. There is an exclusion for some adverse actions and screening practices that are required by federal regulations:

- Federally assisted housing that is subject to federal regulations that require the denial of tenancy when a household member is subject to a lifetime sex offender registration requirement and/or convicted of manufacture or production of methamphetamine on the premises of the federally assisted housing. Qualifying organizations may employ screening practices and take adverse actions on the crimes noted above, but otherwise

must follow all provisions of SMC 14.09.. Read more about Federally Assisted Housing in section B.

**5. When and how can a landlord use a criminal background check?**

Unless there is an exclusion, neither landlords nor any person may run criminal background checks. Examples of “any person” include, but are not limited to: property managers, owners, screening companies, etc. Landlords or any person can adopt screening policies that are more generous to prospective occupants and tenants than the law allows. For instance, a property management company may have a policy of not reviewing sex offender registries.

Review of registry information for an individual listed on a sex offender registry is allowed. In that case, the practice must be listed on the screening criteria as required by Seattle’s [First-in-Time protections](#) found in [Seattle Municipal Code \(SMC\) 14.08](#). Additionally, the practice must be written on the application to meet the requirements of Fair Chance Housing. Read more about Notice to Prospective Occupants and Tenants in section C.

Before a landlord or any person rejects an applicant or takes an adverse action against a prospective occupant or tenant based on registry information, there must be a legitimate business reason for doing so. Read more about Registry Information and Legitimate Business Reason in section E.

**6. Can a non-profit organization that administers a substance-free community for recovering drug users screen applicants for alcohol and drug related crimes?**

No. The non-profit organization is prohibited from screening for arrest records, conviction records, or criminal history unless there is an exclusion provided in SMC 14.09 that applies.

**7. Can I sue someone in court under this Ordinance?**

No. This ordinance does not provide the right to file in court.

## **B. FEDERALLY ASSISTED HOUSING**

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Federally assisted housing must comply with the ordinance; however, there is an exclusion for adverse actions and screening when denial of tenancy is required by federal regulations. The following section explores what qualifies as federally assisted housing subject to federal regulations that require denial of tenancy and some requirements.

**8. How do I know if my organization qualifies as “federally assisted housing subject to federal regulations that require denial of tenancy” that qualifies as an exclusion under SMC 14.09?**

The ordinance does not preclude screening or adverse actions taken by landlords of federally assisted housing subject to federal regulations that require denial of tenancy. For example, the Seattle Housing Authority when acting in accordance with federal law or regulations, and screening companies when they are conducting screenings on behalf of Seattle Housing Authority, must follow federal screening requirements when specifically related to: 1) lifetime sex offender registration; and 2) manufacture or production of methamphetamine on the premises of the federally assisted housing. Public housing authorities are otherwise subject to the requirements of SMC 14.09.

9. **My organization qualifies as federally assisted housing that is required to deny admission based on a lifetime sex offender registration. Can we notify prospective occupants and tenants that they may be denied if they are found to have a lifetime sex offender registration and/or a conviction for manufacture or production of methamphetamine on the premises of the federally assisted housing?**

Yes. First-in-Time protections are part of [Seattle Municipal Code \(SMC\) 14.08](#). Under those requirements, prospective occupants and tenants must be notified of screening criteria. Your organization is otherwise subject to the requirements of the Fair Chance Housing Ordinance.

## C. NOTICE TO PROSPECTIVE OCCUPANTS AND TENANTS

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The ordinance requires landlords to provide notice of SMC 14.09 to prospective occupants and tenants. The following questions and answers explore those requirements.

10. **How does a landlord provide the required notice?**

A landlord must have the requirements of SMC 14.09 written on all applications for rental properties. If an application is online, the required notice must be written on the online application.

11. **What needs to be included in the written notice?**

The ordinance requires the language quoted below. The information following the quoted language provides more detail about the requirements.

“The landlord is prohibited from requiring disclosure, asking about, rejecting an applicant, or taking an adverse action based on any arrest record, conviction record, or criminal history, except for registry information as described in subsections 14.09.025.A.3, 14.09.025.A.4, and 14.09.025.A.5, and subject to the exclusions and legal requirements in Section 14.09.115.”

The **registry information** in the quoted language is defined as information solely obtained from a county, statewide, or national sex offender registry that can include information such as the person’s physical description, address, and conviction description and dates.

If a landlord screens a prospective occupant for registry information, the written notice shall also include this screening criteria and must inform applicants that they may provide any supplemental information related to their rehabilitation, good conduct, and facts or explanations about their registry information.

SMC 14.09.025.A.3 requires a legitimate business reason analysis before a landlord or any person takes an adverse action based on registry information of an **adult** prospective occupant, tenant or household member

SMC 14.09.025.A.4 prohibits taking an adverse action based on registry information of a **juvenile** prospective occupant, tenant or household member.

SMC 14.09.025.A.5 prohibits adverse actions based on registry information against adults if the conviction occurred when the individual was a juvenile.

Under SMC 14.09.115, the exclusions include, but are not limited to, accessory dwelling units and detached accessory dwelling units as described in question #4, and adverse actions and screening when denial of tenancy is required by federal regulations in federally assisted housing.

**12. Since I need to comply with First-in-Time and Fair Chance Housing, can I hand the written notice to the tenant with their move-in packet of information?**

No. This would not satisfy the requirements of Fair Chance Housing. The written notice must be on the application. It also does not satisfy the requirements of First-in-Time because screening criteria must be provided to prospective occupants and tenants before the application stage.

Under First-in-Time protections, landlords must notify applicants of minimum screening criteria, screen applications in the order received, and offer the unit to the first applicant that meets the minimum screening criteria. In addition, landlords must provide at least 72 hours for an applicant to provide supplemental information and cannot consider the next application unless the applicant fails to provide the information.

**13. Can Fair Chance Housing information be included in the screening criteria?**

Yes. Fair Chance Housing information can be included in the screening criteria. However, the landlord must still provide written notice on the application.

**14. I'm a landlord and I screen for registry information on the sex offender registry. Is there anything else I need to include in the written notice?**

Yes. A landlord or any person is not required by SMC 14.09 to screen for registry information. However, if a landlord or any person chooses to screen for registry information, the written notice must include this as screening criteria and inform applicants that they may provide supplemental information about their rehabilitation, good conduct, and facts or explanations about the registry information.

Under First-in-Time provisions, a landlord must provide at least 72 hours for an applicant to provide supplemental information and cannot consider the next application unless the applicant fails to provide the information.

## **D. ADVERTISING, APPLICATIONS, AND SCREENING**

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The ordinance describes prohibited uses of criminal history that applies to “any person,” not just landlords. The following questions and answers explore advertising, applications, and screening.

**15. Can I write or say, “no criminal records,” “no felons,” “clean record required,” or something similar when advertising a unit for rent or talking to potential applicants?**

No. Landlords or any person cannot advertise, publicize, or have a policy that automatically or categorically excludes applicants with an arrest record, conviction record, or criminal history from rental housing in the City of Seattle.

**16. Can I write or ask, “Have you or any household member ever been convicted of a crime?” on a rental application or when talking to an applicant?**

No. Landlords or any person cannot inquire about or require an applicant to disclose this information. The exception to this is the gathering of registry information and other exclusions in SMC 14.09.

**17. Can a landlord or any person use one application for renters in the City of Seattle and for areas outside Seattle?**

If the application complies with all the requirements of SMC 14.09, a landlord or any person can use it for renters within Seattle.

**18. I'm with a screening company and the best way to verify an applicant's identity is through a criminal background check? Can my company do that?**

No. The law prohibits "any person" from requiring disclosure, inquiring about, or taking any adverse action based on arrest records, conviction records, or criminal history, unless an exclusion applies. The screening company may check the accuracy of the information through other means, such as a credit check.

**19. How does the use of a screening company impact the landlord's obligations under the ordinance?**

Landlords are required to provide notice under Fair Chance Housing and First-in-Time protections. Landlords cannot request that any third-party contractor providing screening services screen for arrest records, conviction records, or criminal history unless an exclusion applies. A landlord can request that a screening company provide registry information. If a third-party contractor violates the law, it is possible that both the landlord and third-party contract would be held liable for the violation.

## **E. REGISTRY INFORMATION AND LEGITIMATE BUSINESS REASON**

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The ordinance describes prohibited uses of criminal history that applies to "any person," not just landlords. The following questions and answers explore issues about the use of registry information and the legitimate business reason analysis.

**20. What is "registry information?"**

**Registry information** is defined as information solely obtained from a county, statewide, or national sex offender registry that can include information such as the person's physical description, address, and conviction description and dates.

**21. Can I write or say, "no sex offenders," or something similar when advertising a unit for rent or talking to potential applicants?**

No. Although you may screen applicants through a sex offender registry, you may not automatically or categorically exclude applicants with criminal histories related to sex offenses.

**22. Can I ask, "Are you or any household member on a sex offender registry?" on my rental application.**

Yes. However, the landlord or any person can only take an adverse action against a prospective adult occupant, an adult tenant, or an adult member of their household:

- a. if the conviction occurred when the person was an adult; and

- b. only if there is a legitimate business reason.

Landlords or any person must go through the factors of the legitimate business reason analysis or risk violating SMC 14.09.

A landlord cannot take an adverse action based on the registry information of: 1) juveniles; and 2) adults if the conviction occurred at the time the individual was a juvenile.

**23. What is the standard landlords must use to determine whether there is a legitimate business reason for denying a person tenancy in their rental housing?**

If a landlord or any person finds information about a prospective adult occupant or adult tenant on a sex offender registry, there must be a legitimate business reason analysis before taking an adverse action. Each situation is different and landlords or any person should think about “legitimate business reason” as a process, rather than a checklist.

A legitimate business reason is when a landlord’s policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. To determine such an interest, a landlord must demonstrate, through reliable evidence, a nexus between the policy or practice and resident safety and/or property.

There is no bright line rule about legitimate business reason. Rather, the following factors should be considered:

- The nature and severity of the conviction;
- The number and types of convictions;
- The time that has elapsed since the date of conviction;
- Age of the individual at the time of conviction;
- Evidence of good tenant history before and/or after the conviction occurred; and
- Any supplemental information related to the individual’s rehabilitation, good conduct, and additional facts or explanations provided by the individual, if the individual chooses to do so.

If, after considering the factors noted above, a landlord or any person decides to deny, evict, or take other adverse action against an applicant or tenant based on an adult’s registry information, the landlord or any person must notify the applicant in writing by email, mail, or in person of the specific registry information that was the basis for the denial.

**24. I’m a landlord and a person convicted of a sex offense is trying to rent a unit where I have 10 families residing in the building. Can I automatically tell the person I won’t rent to them?**

No, a landlord or any person must have a legitimate business reason for taking an adverse action like denying tenancy and it is critical that all factors listed above are considered.

**25. Can a landlord check the accuracy of registry information by conducting a criminal background check?**

No. Landlords or any person cannot check the accuracy of registry information by conducting a criminal background check. Landlords or any person may be able to check the accuracy of the information through other means, such as a credit check.

**26. Are landlords required to deny an applicant based on registry information?**

No. Under SMC 14.09, landlords or any person are not required to deny tenancy to an applicant that is on a sex offender registry. Furthermore, a landlord or any person may take such an action only with a legitimate business reason.

**27. I'm a landlord and "I will not accept level 3 sex offenders." Is that okay?**

No. You cannot automatically or categorically deny applicants based on arrest records, conviction records, or criminal history. You may screen applicants listed on a sex offender registry, but cannot say "no level 3 sex offenders." A legitimate business reason analysis is required.

**28. I'm a landlord and I have a legitimate business reason to screen prospective occupants for all felonies. Is it legal if I gather information from a source other than a criminal records search?**

No. Legitimate business reason only applies when a landlord or any person decides to screen for registry information. It is limited to review of conviction information in the sex offender registry. Any attempt of a landlord or any person to gather information about arrest records, conviction records, or criminal history from any other source will be a violation of SMC 14.09, unless an exclusion applies.

**29. What is "status registry information?"**

The phrase "status registry information" has the same meaning as registry information.

"Registry information" is defined as information solely obtained from a county, statewide, or national sex offender registry, including but not limited to, the registrant's physical description, address, and conviction description and dates.

## **F. REQUIRE DISCLOSURE ABOUT, INQUIRE ABOUT, AND ADVERSE ACTION**

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The ordinance describes prohibited uses of criminal history that applies to "any person," not just landlords. The following questions and answers focus on what landlords and any person can require disclosure about, inquire about, and taking adverse actions.

**30. What does "require disclosure" and "inquire about" mean?**

The landlord or any person is prohibited from asking the applicant or anyone else about the applicant's arrest records, conviction records, or criminal history, except for registry information.

**31. What should I do if an applicant provides a comprehensive reusable tenant screening report that includes criminal history information, or if the applicant or someone else shares criminal history information with me?**

If an applicant shares criminal history information with you, show the applicant the required notice on your application and let them know you cannot use the information when making a housing decision about their tenancy, except for registry information. Consider providing SOCR as a resource to the applicant.

If someone other than the applicant such as another tenant, shares criminal history information with you, you cannot use that information when making a housing decision about a prospective occupant or tenant.



## G. OTHER PROHIBITIONS

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The ordinance requires landlords to provide information to prospective occupants and tenants if a consumer report is used in the screening process. The ordinance also prohibits retaliation.

**32. I just applied for a unit and a landlord told me I have bad credit, which isn't true. What are my rights?**

If a consumer report is used by a landlord as part of the screening process, they must provide you with the name and address of the consumer reporting agency. They also must inform you of your right to obtain a free copy of the consumer report if your application was denied and your right to dispute the accuracy of information in the report.

**33. A tenant has not paid rent for 6 months and just filed a claim under SMC 14.09. Can I evict the tenant or is that retaliation?**

It is a violation of the ordinance to take any adverse action against any person because the person exercised their rights under SMC 14.09. If the tenant is evicted within 90 days of filing the complaint, the landlord is presumed to have violated the law. The landlord can rebut the presumption by showing the eviction was permissible because of non-payment of rent.