

FULL ORDINANCE TEXT

PROPOSED ORDINANCE AMENDMENT Sponsored by: BRANDON JOHNSON, LARRY SUFFREDIN and JEFFREY R. TOBOLSKI, Cook County Board of Commissioners

BE IT ORDAINED, by the Board of Commissioners of Cook County that Chapter 42 Human Relations, Section 42-38, of the Cook County Code is hereby amended as follows: Sec. 42-38. - Housing.

(a) Definitions. The following words, terms and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- **Conviction** means a judgment of liability entered upon a plea, verdict or finding of guilt for an offense, rendered by a legally constituted jury, court or administrative authority of competent jurisdiction. Conviction excludes any "juvenile record" as defined below.
- **Covered criminal history** means information regarding an individual's arrest, charge or citation for an offense; participation in a diversion or deferral of judgment program; record of an offense that has been sealed, expunged, or pardoned in accordance with applicable law; juvenile record; and conviction.
- **Evidence of rehabilitation** means any information produced by the individual, or produced on their behalf, with respect to their rehabilitation or good conduct, including but not limited to: the individual's satisfactory compliance with all terms and conditions of his or her sentence; court-issued certificates of good conduct; employer recommendations; educational attainment or vocational or professional training since the conviction; completion or active participation in rehabilitative treatment; and letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, religious institutions or leaders, or parole/probation officers who have observed the individual since his or her conviction.
- **Individualized assessment** means a process by which a person considers all factors relevant to an individual's conviction history and whether that history negatively impacts the individual's ability to fulfill the responsibilities of tenancy, including but not limited to: (1) The nature, severity, and recency of the conduct underlying the individual's specific conviction(s); (2) The nature of the individual's sentencing; (3) The number of the individual's convictions; (4) The length of time that has passed following the individual's most recent conviction; (5) The age of the individual at the time of the most recent conviction; (6) Evidence of rehabilitation; and (7) The individual's tenant history before and/or after the conviction. Juvenile record means juvenile court records, as defined in 705 ILCS 405/1-3(8.1) or comparable state law, and juvenile law enforcement records, as defined in 705 ILCS 405/1-3(3.2) or comparable state law.
- **Offense** means a violation of any penal statute, ordinance, law, or code of any jurisdiction. Person shall mean any person as defined in Section 46-31(15) of this article that is also an owner, lessor, sublessor, assignor, managing agent, or other individual, firm, or corporation having the right to sell, rent, lease, or sublease any housing unit within Cook County, or any agent, broker, or other individual working on behalf of any such individual, firm, or corporation.
- **Real estate transaction** means the sale, exchange, rental, occupancy, lease, sublease, or lease renewal of real property for residential purposes in Cook County or the provision of services or utilities in connection with such sale, exchange, rental, occupancy, lease, sublease, or lease renewal. The term "real estate transaction" also means with respect to activity conducted or property located in Cook County, the brokering or appraising of residential real property in Cook County and the making, purchasing, or guaranteeing of loans or mortgages or providing any

other financial assistance either: (1) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or (2) Secured by residential real property.

(b) Prohibitions.

(1) **Terms and conditions.** No person shall make any distinction, discrimination, or restriction in the price, terms, conditions, or privileges of any real estate transaction, including the decision to engage in or renew any real estate transaction, on the basis of unlawful discrimination or covered criminal history.

(2) **Discriminatory communications.** No person shall publish, circulate, issue, or display, or cause to be published, circulated, issued, or displayed, any communication, notice, advertisement, sign or other writing of any kind relating to a real estate transaction which will indicate or express any unlawful limitation or discrimination on the basis of unlawful discrimination or covered criminal history.

(3) **Listings.** No person shall deliberately and knowingly refuse examination of any listing of residential real property within Cook County to any individual because of unlawful discrimination or covered criminal history.

(4) **Representations.** No person shall deliberately and knowingly represent to an individual that residential real property is not available for inspection, sale, rental, or lease in Cook County when in fact it is available, or fail to bring a residential real estate listing in Cook County to an individual's attention, or refuse to permit a person to inspect residential real property in Cook County because of unlawful discrimination or covered criminal history.

(5) **Blockbusting.** No person shall solicit, for sale, lease, or listing for sale or lease, residential real property within Cook County on the grounds of loss of value due to the present or prospective entry into any neighborhood of any individual(s) or individuals of any particular race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, gender identity, or housing status, or with any covered criminal history.

(6) **Encouragement of blockbusting.** No person shall distribute or cause to be distributed written material or statements designed to induce any owner of residential real property in Cook County to sell or lease such owner's property because of any prospective change in the race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, gender identity, or housing status of individuals in the neighborhood, or because of the presence or prospective entry into the neighborhood of any individual(s) with any covered criminal history.

(7) **Creating alarm.** No person shall intentionally create alarm among residents of any community within Cook County by transmitting communication in any manner, including a telephone call whether or not conversation thereby ensues, with a design to induce any person within Cook County to sell or lease the person's residential real property within Cook County because of the present or prospective entry into the vicinity of the property of any individual(s) or individuals with any covered criminal history or of any particular race, color, sex, age, any individual(s) or individuals with any covered criminal history or of any particular race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, gender identity, or housing status.

(8) **Preemptive inquiries.** No person shall inquire about, consider, or require disclosure of covered criminal history when considering an application for admission to, or continuing occupancy of,

residential real property until the individual has been determined qualified for admission to, or continuing occupancy of, residential real property.

(c) **Exceptions.** The prohibitions in this section shall not apply to any of the following:

(1) **Age.** Restricting rental or sale of a housing accommodation to an individual of a certain age group: a. When such housing accommodation is authorized, approved, financed, or subsidized in whole or in part for the benefit of that age group by a unit of State, local, or Federal government; or b. When the duly recorded initial declaration of a condominium or community association limits such housing accommodations to individuals 50 years of age or older, provided that an individual or members of the household of an individual owning or renting a unit in such housing accommodation prior to the recording of the initial declaration shall not be deemed to be in violation of the age restriction as long as the individual or household member continues to own or reside in the housing accommodation.

(2) **Religion.** Limitation by a religious organization, association, or society, or any not-for-profit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, of the sale, rental, or occupancy of a dwelling which it owns or operates for other than a commercial purpose to individuals of the same religion, or from giving preference to such individuals.

(3) **Single sex.** Restricting the rental of rooms in a housing accommodation to individuals of one sex. The determination of an individual's sex or gender shall be based upon the sex or gender of that individual as reflected on any official identification of that individual recognized by the State, including a driver's license or State identification card.

(4) **Private rooms.** Rental of a room or rooms in a private home by an owner if the owner or a member of the owner's family resides therein or, while absent for a period of not more than 12 months, if the owner or a member of the owner's family intends to return to reside therein.

(5) **Certain conviction history.** Denying the admission to or continuing occupancy of residential real property on the basis of: a. a current sex offender registration requirement pursuant to the Sex Offender Registration Act (or similar law in another jurisdiction); b. a current child sex offender residency restriction; or c. a criminal conviction, provided that the person conducts an individualized assessment, and the individualized assessment shows that denial based on the criminal conviction is necessary to protect against a demonstrable risk to personal safety and/or property of others affected by the transaction. The Cook County Commission on Human Rights shall promulgate rules to enforce this exception.

(6) **Applicable law.** Denying the admission to or continuing occupancy of residential real property on the basis of covered criminal history when federal or state law mandates such denial.

(d) **Sexual harassment.**

(1) No person shall engage in sexual harassment in any real estate transaction.

(2) When used in this subsection, the term "sexual harassment" means any unwelcome sexual advance, request for sexual favors, or conduct of a sexual nature when:

a. Submission to such conduct is an explicit or implicit term or condition of an individual's real estate transaction;

b. Submission to or rejection of such conduct by an individual is used as the basis for any decision affecting the individual's real estate transaction; or

c. Such conduct has the purpose or effect of substantially interfering with an individual's real estate transaction or creating an intimidating, hostile, or offensive environment with respect thereto.

(e) Notice and Opportunity to Dispute Conviction History.

(1) Before an owner may deny admission or continued occupancy on the basis of a conviction, the owner must first give the individual sufficient notice and an opportunity to dispute the accuracy and relevance of the conviction.

(2) To comply with Section (1), the owner must:

a. Before denying admission or continued occupancy, provide the individual with a copy of the tenant selection criteria, a copy of any criminal background check relied upon, and an opportunity to dispute the accuracy and relevance of the conviction(s);

b. Upon denying admission or continued occupancy, notify the individual in writing the reasons why denial based on the conviction is necessary to protect against a demonstrable risk to personal safety and/or property of others affected by the transaction pursuant to Section 42-38(c)(5)(c);

c. Limit the use or dissemination of information about an applicant's criminal history obtained in conjunction with Section (2)(a) to the purpose of evaluating applicants in a manner consistent with this ordinance. Unless otherwise mandated by law, the owner must keep such information confidential. Effective date: This ordinance amendment shall become effective December 31, 2019.

FULL RULES TEXT

JUST HOUSING AMENDMENT INTERPRETIVE RULES

PART 700 Section 700.100 Prohibition of Discrimination

Article II of the Cook County Human Rights Ordinance (“Ordinance”) prohibits unlawful discrimination, as defined in §42-31, against a person because of any of the following: race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge, source of income, gender identity or housing status. Additionally, any written or unwritten housing policy or practice that discriminates against applicants based on their criminal history, as defined in § 42-38(a) of the Ordinance, is a violation of the Ordinance. Any written or unwritten housing policy or practice which discriminates against applicants based on their convictions, as defined in § 42-38(a) of the Ordinance, prior to the completion of an individualized assessment violates the Ordinance. Nothing in this section shall be interpreted as prohibiting a housing provider from denying housing to an applicant based on their criminal conviction history when required by federal or state law.

SUBPART 710 AUTHORITY AND APPLICABILITY

Section 710.100 Authority

These rules are adopted in accordance with the authority vested in the Cook County Commission on Human Rights (“Commission”), pursuant to § 42-34(e)(5) and §42-38(c)(5)(c) of the Ordinance, to adopt rules and regulations necessary to implement the Commission’s powers.

Section 710.110 Applicability

These rules shall go into effect on the effective date of the Just Housing Amendment (No. 19-2394) to the Ordinance and shall only apply to claims that arise out of actions that occur on or after the effective date of the amendments.

SUBPART 720 DEFINITIONS

Section 720.100 Business Day

“Business Day” means any day except any Saturday, Sunday, or any day which is a federal or State of Illinois legal holiday.

Section 720.110 Criminal Background Check

“Criminal background check,” as referenced in § 42-38(e)(2)(a), includes any report containing information about an individual’s criminal background, including but not limited to those produced by federal, state, and local law enforcement agencies, federal and state courts or consumer reporting agencies.

Section 720.120 Demonstrable Risk

“Demonstrable risk,” as referenced in § 42-38(c)(5)(c), refers to the likelihood of harm to other residents’ personal safety and/or likelihood of serious damage to property. When the applicant is a person with a disability, “demonstrable risk” must be based on (a) objective evidence and (b) a conclusion that any purported risk cannot be reduced or eliminated by a reasonable accommodation.

Section 720.130 Individualized Assessment

“Individualized Assessment,” as referenced in § 42-38(a) means a process by which a person considers all factors relevant to an individual’s conviction history from the previous three (3) years. An

individualized assessment is not required for convictions that are more than three (3) years old. Factors that may be considered in performing the Individualized Assessment include, but are not limited to:

- (1)The nature and severity of the criminal offense and how recently it occurred;
- (2)The nature of the sentencing;
- (3)The number of the applicant’s criminal convictions;
- (4)The length of time that has passed since the applicant’s most recent conviction;
- (5)The age of the individual at the time the criminal offense occurred;
- (6)Evidence of rehabilitation;
- (7)The individual history as a tenant before and/or after the conviction;
- (8)Whether the criminal conviction(s) was related to or a product of the applicant’s disability; and
- (9)If the applicant is a person with a disability, whether any reasonable accommodation could be provided to ameliorate any purported demonstrable risk.

Section 720.140 Relevance

“Relevance,” as referenced in § 42-38(e)(2), refers to the degree to which an individual’s conviction history makes it likely that the applicant poses a demonstrable risk to the personal safety and/or property of others.

Section 720.150 Tenant Selection Criteria

“Tenant selection criteria,” as referenced in § 42-38(e)(2)(a), means the criteria, standards and/or policies used to evaluate whether an applicant qualifies for admission to occupancy or continued residency. The criteria, standards and/or policies concerning the applicant’s conviction history from the previous three (3) years shall apply only after a housing applicant has been pre-qualified. The criteria must explain how applicants’ criminal conviction history from the previous three (3) years will be evaluated to determine whether their conviction history poses a demonstrable risk to personal safety or property.

SUBPART 730 TWO STEP TENANT SCREENING PROCESS

Section 730.100 Notice of Tenant Selection Criteria and Screening Process

Before accepting an application fee, a housing provider must disclose to the applicant the following information:

- (A)The tenant selection criteria, which describes how an applicant will be evaluated to determine whether to rent or lease to the applicant;
- (B)The applicant’s right to provide evidence demonstrating inaccuracies within the applicant’s conviction history, or evidence of rehabilitation and other mitigating factors as described in §740.100(B) below; and

(C) A copy of Part 700 of the Commission's procedural rules or a link to the Commission's website, with the address and phone number of the Commission.

Section 730.110 Step One: Pre-Qualification

No person shall inquire about, consider or require disclosure of criminal conviction history before the prequalification process is complete, and the housing provider has determined the applicant has satisfied all other application criteria for housing or continued occupancy.

Section 730.120 Notice of Pre-Qualification

Once a housing provider determines an applicant has satisfied the pre-qualification standards for housing, the housing provider shall notify the applicant that the first step of the screening procedure has been satisfied and that a criminal background check will be performed or solicited.

Section 730.130 Step Two: Criminal Background Check

After a housing provider sends the notice of pre-qualification required by Section 730.120, a housing provider may conduct a criminal background check on the prequalified applicant. However, the housing provider may not consider any information related to the criminal convictions that are more than three (3) years old or any covered criminal history as defined in Section 42-38(a) of the Ordinance.

SUBPART 740 CONVICTION DISPUTE PROCEDURES

Section 740.100 Notice

Within five days of obtaining a background check on an applicant, the housing provider must deliver a copy of the background check to the applicant. The housing provider must complete delivery in one of the following ways: (1) in person, (2) by certified mail, or (3) by electronic communication (e.g., text, email).

Section 740.110 Opportunity to Dispute the Accuracy and Relevance of Convictions

Once a housing provider complies with the requirements of Section 740.100, the applicant shall have an additional five (5) business days to produce evidence that disputes the accuracy or relevance of information related to any criminal convictions from the last three (3) years.

Section 740.120 Dispute Procedures and Other Applicants

Nothing in these rules shall prevent a housing provider from approving another pre-qualified individual's housing application during the pendency of the criminal conviction dispute process.

SUBPART 750 REVIEW PROCESS

750.100 General

After giving an applicant the opportunity to dispute the accuracy and/or relevance of a conviction, a housing provider shall conduct an individualized assessment, in accordance with Sections 720.120 through 720.140. of these rules, to determine whether the individual poses a demonstrable risk. If the applicant poses a demonstrable risk, the housing provider may deny the individual housing.

Section 750.110 Exceptions

A housing provider must perform an individualized assessment prior to denying an individual housing based on criminal conviction history, except in the following circumstances:

(A) A current sex offender registration requirement pursuant to the Sex Offender Registration Act (or similar law in another jurisdiction); and/or

(B) A current child sex offender residency restriction.

Section 750.120 Prohibited Factors

Any person conducting an individualized assessment, as defined in Section 720.130 of these rules, is prohibited from basing any adverse housing decision, in whole or in part, upon a conviction that occurred more than (3) years from the date of the housing application.

SUBPART 760 NOTICE OF FINAL DECISION

Section 760.100 Decision Deadline

A housing provider must either approve or deny an individual's housing application within three (3) business days of receipt of information from the applicant disputing or rebutting the information contained in the criminal background check.

Section 760.110 Written Notice of Denial

(A) Any denial of admission or continued occupancy based on a conviction must be in writing and must provide the applicant an explanation of why denial based on criminal conviction is necessary to protect against a demonstrable risk of harm to personal safety and/or property.

(B) The written denial must also contain a statement informing the housing applicant of their right to file a complaint with the Commission.

Section 760.120 Confidentiality

The housing provider must limit the use and distribution of information obtained in performing the applicant's criminal background check. The housing provider must keep any information gathered confidential and in keeping with the requirements of the Ordinance.

SUBPART 770 EVALUATION

Section 770.100 Evaluation and Report

The Commission on Human Rights shall conduct an evaluation of the rules implementing the Just Housing Amendment to the Cook County Human Rights Ordinance to determine whether the rules should be amended to better effectuate the Amendment's purpose. The evaluation shall include an analysis of whether applicants who receive a positive individualized assessment from housing providers are ultimately admitted into the unit that they applied for. This analysis will inform the Commission on Human Rights on whether it needs to modify the rules to re-instate a requirement that housing providers hold the unit open during the individualized assessment process. In addition, the evaluation should include data about complaints brought under the Just Housing Amendment. The evaluation shall be completed and made publicly available by March 31, 2021.