



## COOK COUNTY COMMISSION ON HUMAN RIGHTS

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COMMISSION ON HUMAN RIGHTS

October 30, 2019

The Honorable Larry J. Suffredin  
Chairman, Cook County Board Rules and Administration Committee  
Cook County Commissioner, 13<sup>th</sup> District  
118 N. Clark Street  
Room 567  
Chicago, IL 60602

Dear Chairman Suffredin:

In accordance with the Cook County Board's Rules and Administration Committee's ("Rules Committee") October 23, 2019 request, enclosed please find a detailed explanation as to why the Cook County Commission on Human Rights ("Commission") did not adopt the Rules Committee's suggested modifications to the Just Housing Amendment Interpretive and Procedural Rules.

The Commission is scheduled to meet again on November 5, 2019 and will reconsider the Rules Committee's suggested modifications at that time. Any modifications made to the Commission's October 16, 2019 approved rules will be forwarded to the Commission on or before November 6, 2019.

If you have any questions regarding the enclosed memorandum, please feel free to call me at (312) 744-1545.

Sincerely,

Kenneth A. Gunn  
Chairman  
Cook County Commission on Human Rights

To: The Honorable Larry Suffredin, Chair, Cook County Board Rules and Administration Committee

From: Cook County Commission on Human Rights

Date: October 30, 2019

Re: Response to the Cook County Rules and Administration Committee's September 25, 2019 Suggested Modifications to the Just Housing Amendment Interpretive and Procedural Rules

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### Background

On April 25, 2019, the Cook County Board of Commissioners unanimously passed Ordinance No. 19-2394, more commonly known as the Just Housing Ordinance ("Ordinance"). The Ordinance prohibits housing providers and their agents from 1) asking about an applicant's criminal history prior to determining whether the applicant is qualified for housing based on all other relevant criteria; and 2) considering a housing applicant's covered criminal history<sup>1</sup> during any part of the housing application process. See Cook County Code of Ordinances ("County Code") § 42-38(a), (b)(8).

It also prohibits housing providers and their agents from denying housing to housing applicants with criminal convictions<sup>2</sup> without first engaging in an "individualized assessment"<sup>3</sup> that shows that the "denial based on the criminal convictions is necessary to protect against a demonstrable risk to personal safety and/or property of others affected by the transaction." *Id.* § 42-38(c)(5)(c).

The Ordinance, however, fails to provide any additional guidance to the Cook County Commission on Human Rights ("Commission") or the public as to what type of conviction,

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<sup>1</sup> "Covered criminal history" is defined as "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." County Code § 42-38(a).

<sup>2</sup> Landlords may, however, deny admission to those individuals who are under a current sex offender registration requirement or residency restriction. See *id.* § 42-38(c)(5)(a)-(b).

<sup>3</sup> "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." *Id.* § 42-38(a).

outside of sex crimes requiring registration or restricting residency, could or would constitute a demonstrable risk to personal safety and/or property. *See generally id.* § 42-38(a).

#### Express Authority to Promulgate Rules

The section of the Ordinance prohibiting a denial solely based on criminal conviction history except in limited circumstances (when it is necessary to protect against a demonstrable risk to personal safety and/or property), is also the section that expressly authorizes the Commission to promulgate rules to enforce that exception. *Id.* § 42-38(c)(5)(c).

Therefore, relying on the express authority granted to the Commission in § 42-38(c)(5)(c) of the Ordinance, the Commission began to consider language to enforce the exception through defining the term “demonstrable risk.” The Commission interpreted the Ordinance’s inclusion of the word “demonstrable” in front of “risk” to mean that the risk to personal safety or property should be capable of being demonstrated or proved and should not merely be defined by the subjective interpretations of housing providers.<sup>4</sup>

After listening to the advocates on both sides, the Commission determined that it was imperative to further define the term “demonstrable risk” to 1) reduce the risk of spurious lawsuits and 2) ensure that individuals who committed a non-violent offense (e.g., retail theft of an item valued at less than \$500) more than 15 years ago could not be discriminated against for the rest of their lives.

Thus, in accordance with the express authority granted to the Commission and the public’s need for more clarity, the Commission, in its initial version of the rules, provided a framework for housing providers to use when determining whether a conviction constitutes a demonstrable risk. The framework focused on categories of crimes and also provided a definite look back period for housing providers, both of which are common in other jurisdictions with similar laws.

In addition to further defining “demonstrable risk,” the Commission felt it necessary to promulgate procedural rules around the notice and comment period to ensure that housing providers provided a meaningful opportunity to applicants to dispute the accuracy or relevance of any convictions contained within the criminal background check.

It is with the above understanding of its delegated authority and the need to provide clarity to the public that the Commission provides the following comments on each suggested modification recommended by the Cook County Board’s Rules and Administration Committee to the rules submitted by the Commission to the County Board on July 25, 2019.

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<sup>4</sup> It is also the Commission’s belief that if the Commission’s authority to promulgate rules was limited to the notice and dispute process, the express authority granted to the Commission to promulgate rules would have been included in subsection (e), the section of the Ordinance titled “Notice and Opportunity to Dispute Conviction History.”

## Suggested Modifications

### **Section 720.120**      **Demonstrable Risk**

- The Rules Committee suggested the addition of subsection (C) which states, “A conviction or conviction history that, when analyzed by the housing provider in an Individualized Assessment, warrants denial of occupancy or continued occupancy.”
- The Commission rejected this suggested modification was contrary to both the plain language and spirit of the Ordinance. The adoption of subsection (C) would mean that the housing provider’s interpretation of what constitutes a “demonstrable risk” could not be questioned. The meaning of the term “demonstrable risk” would be wholly subjective. If the Commission accepted this recommendation, it could only find procedural violations of the Ordinance.
- Also, while the Rules Committee did not suggest a change in the “look back period,” after further consideration and to remain consistent with guidelines currently used by the Housing Authority of Cook County (HACC) and the Chicago Housing Authority (CHA), the Commission amended this section to reduce the lookback period to three years.

### **Subpart 740**      **Conviction Dispute Procedures**

- The Rules Committee suggested that applicants be given two business days to notify housing providers of their intent to dispute the accuracy and/or relevance of their convictions and an additional five business days to produce evidence that disputes the accuracy and/or relevance of their convictions.
- The Commission rejected this suggested modification because it felt that shortened timeframe did not allow housing applicants a meaningful opportunity to dispute the accuracy or relevance of their convictions. Mail often takes more than two business days to receive when it is sent in Cook County to an address in Cook County and the two-day timeframe also fails to take into account individuals that are homeless and unable to regularly receive and respond to mail.
- The Commission also made numerous changes to this subpart to ensure that individuals were not denied housing prior to the housing providers completion of an individualized assessment.