

AS AMENDED ON MAY 24, 2021

ORDINANCE NO. ~~2667~~

AN ORDINANCE OF THE CITY OF SALISBURY TO AMEND CHAPTER 15.26 OF THE SALISBURY CITY CODE, ENTITLED “RENTAL OF RESIDENTIAL PREMISES”, BY ADDING A NEW SECTION 15.26.045 ENTITLED “FAIR CHANCE HOUSING”.

RECITALS

WHEREAS, the Mayor and Council of the City of Salisbury desire to update the Salisbury City Code to adopt a fair chance housing policy to reduce the barriers to housing for individuals with a criminal history; and

WHEREAS, mass incarceration is a national and local crisis, and restoring the rights of people affected by mass incarceration is a national priority; and

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, homelessness is a critical issue in the City of Salisbury and formerly incarcerated people are disproportionately affected by homelessness, which can prevent a formerly incarcerated person from getting a job, from visiting with their children, and from fulfilling other needs that are fundamental to reintegrating with the community after incarceration; and

WHEREAS, many landlords and landlord’s agents require a criminal background check as part of the application process for rental housing, and information obtained from that criminal background check may be used to deny housing to otherwise qualified applicants; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) has recognized the discriminatory impact that criminal background checks can have on homelessness and minority communities across the United States and ~~have imposed~~, accordingly, HUD has promulgated guidelines addressing the use of criminal background checks during the applicant screening process; and

WHEREAS, notwithstanding the aforesaid HUD guidelines, reliance on criminal background checks by landlords and landlord’s agents creates additional barriers for previously incarcerated individuals and their families to access affordable housing; and

WHEREAS, for those persons with limited income and time constraints, the lack of transparency during the applicant screening process creates further difficulties and costs that could be avoided; and

WHEREAS, the Council of the City of Salisbury has concluded that it is in the best interest of the City **(i)** to increase transparency by landlords and landlords’ agents to allow applicants to better understand the necessary qualifications considered to lease or rent a residential dwelling unit, and, **(ii)** accordingly, to amend the Salisbury City Code to require landlords and landlord’s agents provide a transparency disclosure regarding the use of a Background Check Report (as defined herein) for rental applicants.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 1. Chapter 15.26 of the Salisbury City Code, entitled “Rental of Residential Premises”, be and is hereby amended by adding the bolded and underlined language as follows:

Chapter 15.26.045 – Fair Chance Housing Policy.

A. Definitions.

In addition to those “Definitions” set forth in Chapter 15.26.030, the following words have the following meanings:

“Agent” means a person authorized to make, contract, or authorize a Lease or to charge Rent for a Dwelling Unit on behalf of a Landlord.

"Applicant" means a person who seeks information about, visits, or applies to Rent or Lease a Dwelling Unit or who seeks to be added as a household member to an existing Lease for a Dwelling Unit.

"Arrest" means a record from any jurisdiction that does not result in a Conviction and includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, or tried and acquitted for any felony, misdemeanor, or other criminal offense.

"Background Check Report" means any report regarding an Applicant's Criminal History, including but not limited to those produced by the Federal Bureau of Investigation, Maryland State Police, other law enforcement agencies, courts, or any consumer reporting or tenant screening agency.

"Conviction" means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor or other criminal offense and for which the person was placed on probation, fined, imprisoned and/or paroled.

"Criminal History" means information transmitted orally or in writing or by any other means, and obtained from any source, including but not limited to the person to whom the information pertains, a government agency, or a Background Check Report, regarding one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute; a determination or adjudication in the juvenile justice system; a matter considered in or processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.

"Landlord" means the owner of a Dwelling Unit.

"Lease" means any agreement, written or verbal, that establishes or modifies the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a Dwelling Unit.

"Owner" means:

(1) Any person having a legal or equitable interest in the Dwelling Unit, including, but not limited to a mortgagee and an assignee of rents;

(2) Any person who, alone or jointly or severally with others, shall have the charge, care, or control of any structure as executor, administrator, trustee or guardian of the estate of the owner; or

(3) Any person whose name appears on the property tax bill for a Dwelling Unit.

"Rent" means the amount charged for the right to possession and use of a Dwelling Unit.

B. Requirements for a Landlord and a Landlord's Agent.

1. ~~A~~Before a Landlord ~~and~~or a Landlord's Agent may charge an Applicant a fee to apply to Lease or Rent a Dwelling Unit, the Landlord or the Landlord's Agent shall disclose to ~~an~~the Applicant: (a) the charge or cost of the application for Lease or Rent of a Dwelling Unit; (b) if a Background Check Report will be conducted and, if so, how ~~fair~~far back the Background Check Report can extend, referred to as the "lookback period;" ~~and~~, (c) ~~and~~ any exclusionary criteria used to screen an Applicant ~~before the Landlord or the Landlord's Agent may charge an Applicant a fee to apply to Lease or Rent.~~
2. A Landlord and a Landlord's Agent shall ~~also~~: (a) disclose ~~on all promotional materials and advertisements related to Renting or Leasing a Dwelling Unit~~ their the Landlord's or Landlord's Agent's policies and practices related to a Background Check Report ~~and shall~~on their website(s), within their application materials, and at their rental or leasing office(s); and, (b) provide notice of the requirements set forth in subsection B(1) above ~~in their~~within the Landlord's or Landlord's Agent's application materials, on their ~~websites, website(s),~~ and at ~~any Rental~~their rental or ~~Leasing offices, leasing office(s).~~

3. If a Landlord ~~and/or~~ a Landlord's Agent orders a Background Check Report for an Applicant, ~~they~~ such Landlord or Landlord's Agent shall provide a copy of ~~that report~~ the Background Check Report to the Applicant.

C. No Conflict with State or Federal Law.

This Chapter is not intended to conflict with state or federal law. If there is a conflict between the provisions of federal or state law and this Chapter, federal or state law shall control.

D. Effective Date.

The provisions of this Chapter shall take effect upon thirty (30) days after final adoption of this Ordinance. The City shall cause notice of this Ordinance to be mailed to all Landlords subject to Chapter 15.26 within ninety (90) days of final adoption of this Ordinance.

E. Enforcement.

Failure of a Landlord or Landlord Agent to comply with Chapter 15.26.045B shall result in the issuance of a municipal infraction and shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00) per violation.

BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 2. It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Ordinance shall be deemed independent of all other provisions herein.

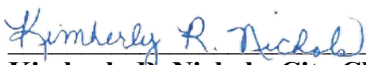
Section 3. It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Ordinance shall remain and shall be deemed valid and enforceable.

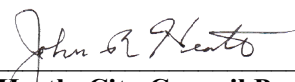
Section 4. The recitals set forth hereinabove are incorporated into this section of the Ordinance as if such recitals were specifically set forth at length in this Section 4.

Section 5. This Ordinance shall take effect ~~from and~~ thirty (30) days after the date of its final passage.

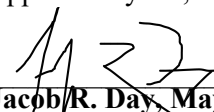
THIS ORDINANCE was introduced and read at a Meeting of the Mayor and Council of the City of Salisbury held on the 10th day of May, 2021 and thereafter, a statement of the substance of the Ordinance having been published as required by law, in the meantime, was finally passed by the Council of the City of Salisbury on the 24th day of May, 2021.

ATTEST:


Kimberly R. Nichols, City Clerk


John R. Heath, City Council President

Approved by me, this 11th day of June, 2021.


Jacob R. Day, Mayor



City of
Salisbury
Jacob R. Day, Mayor

To: City Council

From: Johannah Cooper, Community Engagement Fellow for Vulnerable Populations

Subject: Fair Chance Housing- Transparency Disclosure Legislation

Date: April 28, 2021

The City of Salisbury seeks to reduce the barriers to accessing rental housing for individuals with criminal histories. Landlords and property management companies would be required to disclose their policies and practices related to criminal background checks on all promotional materials, including the application and website. Required information includes description of fees, period of 'lookbacks' on criminal histories that are evaluated and any other information related to background checks and exclusionary criteria for applicants.

After an initial presentation to Council during the January work session, members of the City's team have met with SAPOA and other stakeholders to discuss the challenge for residents in Salisbury and brainstorm potential solutions. We have gained consensus to move forward with a required transparency disclosure and host further conversation on additional options. I believe that providing information about exclusionary criteria, particularly as it relates to criminal background can reduce the time and money spent submitting multiple housing applications only to be denied without explanation. This level of transparency is important for applicants to understand the necessary qualifications for consideration in a particular property.

For previously incarcerated individuals, the common practice of completing of and denial of applicants based on criminal background checks presents an additional barrier to accessing housing. While the City is interested in creating additional measures to reduce housing barriers, creating an ordinance to require transparency has the potential to benefit residents and is a step in creating a more inclusive community by removing one barrier in the process. Doing so allows applicants to understand the criteria and make an informed decision to move forward for consideration. If an

ordinance of this nature is passed, Salisbury would become one of the first small municipalities to enact a policy of this nature.

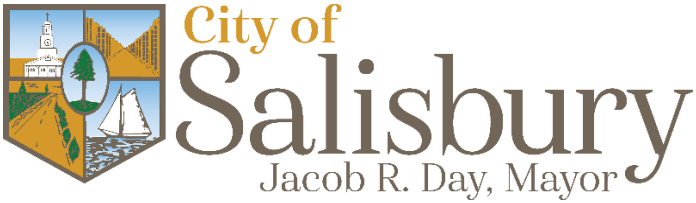
In the United States, 1 in 3 adults have a criminal record of some kind, and thus this type of policy in the rental application process presents a large housing challenge. The Department of Housing and Urban Development (HUD) has recognized the discriminatory nature that criminal background checks have on homelessness and communities across the U.S. In 2016, HUD set forth the following guidelines¹:

- Landlords and rental companies may not have ‘blanket bans’ on criminal history and they cannot conduct background checks inconsistently
- Policies that prohibit individuals with a criminal history from renting must be stated in writing
- Landlords must consider criminal activity on an individual basis to evaluate the threat to the rental owner’s property
- For federally-funded housing, the exclusions to this prohibition include those registered on the national lifetime sex offender registry and those who are convicted of manufacturing methamphetamine on federal property
- Landlords who deny based on criminal history must provide explanation and evidence of substantial threat related to the conviction

In Maryland, there are currently 117,000 individuals behind bars or under criminal justice supervision, according to the Prison Policy Initiative². In addition, there are increasing numbers of individuals being released from Eastern Correctional Institute and other facilities in the State. The impact of discluding those with criminal histories is far reaching but is an even larger concern for minorities. Among those currently involved with the criminal justice system in MD, 72% are Black or Latinx, despite only being 37% of the State’s population (Prison Policy Initiative). This

¹ <https://www.thehousingcenter.org/brochures/criminal-history/>

² <https://www.prisonpolicy.org/profiles/MD.html>



disproportionate representation indicates a larger disparity for people of color in the criminal justice system, thus housing discrimination further placing people of color in a disparate position to their white counterparts. While it is against Federal and State law to deny housing based on race and ethnicity, landlords are still able to engage in discriminatory practices by using criminal histories as exclusionary criteria.

Shelter is among the five basic needs for survival, however accessing stable housing is often difficult for re-entering individuals and their families. Most landlords and property management companies require a criminal background check as part of the application process for rental housing. This information is then used to deny housing to otherwise qualified applicants, typically resulting from fears related to liability. This common practice creates an additional barrier for previously incarcerated individuals and their families. For those with limited income and time constraints, the lack of transparency creates concerns for individuals and families during the application process, who may submit multiple applications, pay the required fees and are denied with little to no explanation.

The Fair Chance Housing project will continue to be a priority for the City. Additional steps to increase housing access, such as incentive programs, landlord insurance for renting to individuals with criminal history and other measures to promote equitable practices will be researched. Further conversations with SAPOA and stakeholders will be held to determine a solution that benefits the community while including the perspective of landlords and property managers. However, beginning with a step towards increased transparency places individuals with criminal histories at a more equitable position to access housing by having the necessary information before beginning the application process. Doing so creates one layer of protection from the variety of social challenges.

Please let me know if you have any questions.