

## **The Real Estate Board of New York to The Committee of Civil and Human Rights and the Committee on General Welfare of the New York City Council Concerning Pre-considered Items and Intros 146, 1020, 2018, 1339 and 2047**

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential and institutional property owners, builders, managers, investors, brokers, salespeople and other organizations and individuals active in New York City real estate. Thank you for the opportunity to provide feedback on the issues of rental assistance and discrimination.

REBNY strongly supports efforts to expand access to rental assistance programs. This includes the Obama Administration's [rule](#) to "Affirmatively Further Fair Housing," which encourages local municipalities to take into account how their land use practices can perpetuate patterns of segregation and to devise an action plan to do better. REBNY also continues to support the expansion of the Right to Counsel program, the City's mandatory inclusionary housing program, expanded use and eligibility criteria for vouchers and better enforcement of bad actors to address systemic patterns of segregation, housing access and discriminatory practices such as against sources of income.

REBNY also takes seriously its role in educating brokers on their responsibilities under the Fair Housing Act, state and city licensing laws. There is zero tolerance for fair housing violations in the REBNY Residential Listing Service.

Of course, there is more work to be done. REBNY looks to continued discussion and engagement on proactive, data based solutions that will expand access to housing for all New Yorkers.

The data is clear that expanding access to vouchers is an effective tool to help integrate neighborhoods of opportunity and provide financial security for tenants in neighborhoods experiencing significant change and transition. Furthermore, providing housing support vouchers to people on the verge of homelessness is a prudent use of taxpayer money. Research from both the [Center on Budget and Policy Priorities](#) and the [National Bureau of Economic Research](#) document that it is more cost-effective for government intervention to keep or place someone in their home than it is to provide temporary shelter. Stabilizing an individual or household prior to experiencing housing instability, the trauma of an undeserved eviction process and entering the shelter system will always be less expensive than providing legal services at a hearing, paying for emergency hotel rooms and dealing with the long-term health and social impacts of losing one's home. More than that - It is simply the right thing to do.

Moreover, while these issues are important for all New Yorkers facing housing instability, they are particularly acute in communities of color and for people experiencing mental health challenges. This is the case because of the deep unjust impact of the justice system on communities of color and people experiencing mental health challenges. Fair housing guidance also recognizes the disparate impact to communities of color when there are blanket rules against housing anyone with a criminal record.

For this reason, REBNY appreciates the efforts being made by the City Council to expand access to stable housing.

The principle criteria for identifying if a tenant is qualified for housing should be their ability to pay without regard to the source of income from which the tenant pays their rent. But the ability to pay is not the only criteria an owner is obligated to take into consideration. An owner has an equal obligation to tenants already in the building to provide a safe, healthy and livable environment – the warrant of habitability. Lease terms speak to the obligations of both parties to not engage in behavior that is dangerous, hazardous or detrimental to life, health or safety. As currently framed, unfortunately, Intro 2047 does not adequately address the rights of other tenants nor even the owner to appropriately balance the warrant of habitability with greater access to housing.

Indeed, achieving this balance is important and consistent with the Fair Housing Act, which only prohibits arbitrary and overly broad bans related to criminal history. According to the U.S. Department of Housing and Urban Development (HUD), "policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction."

With the need to strike this balance in mind, Intro 2047 should be revised to align with this guidance and allow for consideration of prior convictions to the extent that such information could help a housing provider make informed decisions on behalf of the larger tenant community.

Fair chance housing statutes in Oakland, Berkeley, Detroit, Seattle and Chicago allow for screening of these types of convictions as part of the application process, and provide redress for potential discrimination. In particular, the [Detroit Fair Chance Housing Ordinance](#) strikes a reasonable balance between the rights of persons with a criminal history and property owners' requirement to provide safe housing to tenants. The law states that owners may only investigate the applicant's criminal history if they have determined the tenant is qualified to rent under all other phases and if the applicant has a criminal record, they may be denied housing only for crimes relevant to the safety of other people or property.

Lastly, by effectively barring any consideration of criminal history instead of delineating into specific types of criminal convictions may have the unintended consequence of not diminishing discrimination at all. A [report by the Pew Charitable Trust](#) indicated that broad legislation that aims to target criminal history discrimination could exacerbate the racist discrimination they intend to fight against. Additionally, [a study conducted by the University of Washington](#) on several new ordinances in Seattle found owners adopted stricter criteria for rental housing, not less.

REBNY does not propose doing nothing. Coupled with implicit bias training and other education tools, if the Council modifies this bill to explicitly define what criminal conviction history can or cannot be considered by property owners' and for those convictions that can be considered, to allow for a set time period to remove that history from consideration, mirroring the success of the Detroit law, it will better achieve the anti-discrimination goals of other successful Fair Chance laws.

Doing such will also support owners' legal obligation to keep all tenants safe and will be consistent with existing Fair Housing law.

Additionally, in an effort to address the root cause of these discriminatory issues, government should consider solutions that allow individuals who have been convicted of certain criminal history to have their records sealed and expunged, so that property owners are not able to view any criminal history in relation to minor and non-violent charges.

Thank you for the consideration of these points. What follows is bill-specific feedback.

**BILL:** Preconsidered Int. T2020-4051

**SUBJECT:** A Local Law to amend the administrative code of the city of New York, in relation to the prohibition against discrimination in housing accommodations based on lawful source of income. This bill would expand the application of such prohibitions to any housing accommodation comprised of three or more units, rather than the six or more units currently under law.

**SPONSORS:** Councilmember Powers

This bill would expand the prohibition of discrimination in housing accommodations based on lawful source of income from housing accommodations comprised of five or more units, to housing with three or more units.

Source of income discrimination has been illegal in New York City since 2008. Extending that prohibition to cover a broader universe of multi-family housing types is appropriate. As previously stated, the principle criteria for determining if a tenant is qualified to rent a unit of housing should be their ability to pay, regardless of their source of income.

**BILL:** Preconsidered Int. T2020-6576

**SUBJECT:** A Local Law to amend the administrative code of the city of New York, in relation to online access to rental assistance program status

**SPONSORS:** Councilmember Levin

This bill requires the Department of Social Services (DSS) to make the status of a rental assistance application or renewal request, made on or after the effective date of this section, available on the department's website to the applicant or requester.

This legislation is an important step towards greater government transparency that will help rental assistance recipients make informed decisions about their housing.

**BILL:** Int. 146

**SUBJECT:** A Local Law to amend the administrative code of the city of New York, in relation to rental assistance vouchers.

**SPONSORS:** Councilmembers Stephen T. Levin, Justin L. Brannan, Rafael Salamanca, Jr., Alan N. Maisel, Carlina Rivera , Adrienne E. Adams, Donovan J. Richards, Ben Kallos, Alicka Ampry-Samuel , Carlos Menchaca, Helen K. Rosenthal, Bill Perkins, Antonio Reynoso, Public Advocate Jumaane Williams, Deborah L. Rose, Diana Ayala , Keith Powers , James G. Van Bramer, Mark Levine, Margaret S. Chin, Brad S. Lander, Robert E. Cornegy, Jr., Karen Koslowitz, Daniel Dromm , Andrew Cohen, Francisco P. Moya, Ritchie J. Torres, Ydanis A. Rodriguez, Mark Treyger, Rory I. Lancman, Barry S. Grodenchik, Costa G. Constantinides, Ruben Diaz, Sr., Farah N. Louis, Peter A. Koo, Vanessa L. Gibson, Mathieu Eugene, Chaim M. Deutsch, Inez D. Barron, Laurie A. Cumbo

This bill would require that any individuals or families receiving rental assistance vouchers established by the DSS, such as the current LINC, CityFEPS and SEPS vouchers, would continue to receive the assistance so long as the household continues to meet any other eligibility requirements. The bill would also require that the maximum rent toward which rental assistance vouchers may be applied annually increases at the same rate as the fair market rents set by the United States Department of Housing Preservation and Development.

This change is an important step to ensuring a definition of household status and eligibility that captures New York's most vulnerable populations. Setting maximum rents to HUD fair market rent rates will help ensure that rental assistance and voucher recipients have access to resources that will help them maintain their housing costs, and that property owners are fully compensated for and incentivized to provide housing to these recipients. REBNY supported similar changes at the state level for the extension of the SCRIE and DRIE programs to close the gap between fair market rents and voucher subsidies.

Additional changes for consideration would include reasonable phase in and out periods for voucher assistance, timely payments to property owners, and provide for the appropriate social services care continuum to facilitate independent living.

We would be remiss in not noting, however, that in order for vouchers to be a viable, effective legislative remedy to address issues of affordability, voucher holders must have housing in which to utilize them. Housing production of units is still important considering the deficit of housing units produced over the last decade and the city's homelessness rate. According to a 2018 paper "Protect Tenants, Prevent Homelessness" from the National Law Center on Homelessness and Poverty, "There is not enough affordable and available housing for America's millions of low-income renters.... The lack of affordable housing causes housing instability for low income renters and leads to increased risk of eviction."

**BILL:** Int. 1020

**SUBJECT:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the Department of Homeless Services and the Human Resources Administration to track and report certain data regarding rental assistance programs.

**SPONSORS:** Councilmember Alicka Ampry-Samuel

This bill would require that the Department of Homeless Services and the Human Resources Administration track and report certain data regarding rental assistance programs, including outcomes of the Family Homelessness & Eviction Prevention Supplement (FHEPS) and any future rental assistance program created for New York City residents.

As with Intro. No. 6576, REBNY supports legislation that encourages tracking, reporting and data transparency. Accountability is critical to ensuring that City objectives are met, and that government can best respond to the needs of its constituents. Providing information that would be subject to FOIL in a manner that is easily accessible is a positive action to improve government transparency and accountability. Rote items such as the number of applicants received, the number of applicants approved, applications and approvals aggregated by zip code, whether a client household re-entered the shelter system and consolidated demographic information would assist in better targeting enforcement, education and assistance efforts in the future.

**BILL:** Int. 2018

**SUBJECT:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of social services to provide domestic violence services at all shelters.

**SPONSORS:** Councilmembers Helen K. Rosenthal, Ben Kallos, Margaret S. Chin

This bill would require the Department of Homeless Services (DHS) to provide services to domestic violence survivors in all DHS shelters. These services would be coordinated by a social worker.

A rise in domestic violence instances is a contributing factor in home insecurity and homelessness in the city. According to a recent [report](#) by the city comptroller's office, approximately 40% of families entering the shelter system experienced domestic violence. REBNY supports a continuum of care model that coordinates housing and social services, which this bill aims to address, and encourages the Council to be explicit in regard to the intent of the legislation.

**BILL:** Int. 1339

**SUBJECT:** A Local Law to amend the administrative code of the city of New York, in relation to providing information about lawful source of income discrimination to city rental assistance applicants.

**SPONSORS:** Councilmembers Diana Ayala , Vanessa L. Gibson, Brad S. Lander, Donovan J. Richards, Public Advocate Jumaane Williams, Margaret S. Chin, Keith Powers , Antonio Reynoso, Robert E. Cornegy, Jr., Carlina Rivera

This bill would require the New York City Department of Social Services (DSS) to arrange for the provision of a written notice to applicants who are found potentially eligible for rental assistance programs administered by DSS. The notice would provide information about protections under the New York City Human Rights Law related to discrimination on the basis of a person's lawful source of income.

REBNY supports Intro. No. 1339 and would recommend that such notice be prepared in the most common languages of the city.

**BILL:** Int. 2047

**SUBJECT:** A Local Law to amend the administrative code of the city of New York, in relation to prohibiting housing discrimination on the basis of arrest or criminal record.

**SPONSORS:** Councilmembers Stephen T. Levin, Brad S. Lander, Keith Powers , Public Advocate Jumaane Williams, Robert E. Cornegy, Jr., Carlina Rivera , Carlos Menchaca, Vanessa L. Gibson, Ben Kallos, Mark Levine, Adrienne E. Adams, Helen K. Rosenthal, Alicka Ampry-Samuel

This bill would prohibit property owners, brokers and agents from inquiring about criminal record information at any stage within the rental, lease, sublease or occupancy agreement process. Specifically, landlords, brokers and agents would be prohibited from asking any question(s) or doing any searches of publicly available records, criminal background checks or any other such conduct intended to gather information from or about an applicant's criminal history (communicated to an applicant in writing or otherwise, directly or indirectly). Additionally, penalties of up to \$250,000 are imposed on landlords who deny an applicant, increase charges or fail to move forward based on an applicant's criminal history.

REBNY supports the anti-discrimination intent of this legislation. The United States Supreme Court in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* upheld that "disparate impact" is a viable theory of liability under the United States Fair Housing Act. "Disparate impact" occurs when certain housing or lending policies, which are neutral or seemingly non-discriminatory on their face, have a disproportionately adverse effect or impact on a member of a protected class and there is no legitimate, non-discriminatory business need for the policy or practice causing such disparate impact.

Criminal background is not a protected class, but the wholesale consideration of and rejecting an applicant for that history could be considered a disparate impact. Additionally, U.S. Department of Housing and Urban Development "Guidance on the Application of the Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions" explains that a housing policy which excludes individuals because of an arrest history is never "necessary to achieve a substantial, legitimate, nondiscriminatory interest." Thus, housing providers' may not use prior arrest history as a proper basis for denying an individual access to housing. It is appropriate to ban its consideration.

However, there are concerns regarding the breadth of this bill, limitations on property owner's ability to maintain the legal obligations of the warranty of habitability and that criminal conviction history cannot be considered at any stage of the application process. Fair chance housing laws in relation to criminal history around the nation allow for specific criminal history to be reviewed by property owners. For example, Berkeley, Oakland, Detroit, and Chicago all allow for sex offense convictions to be considered by housing providers. Unlike Intro. No. 2047, the language in these national examples is explicit to those crimes that have a direct impact to the other tenants, which protects both current tenants, property owners and prospective applicants.

An example of a Fair Chance Ordinance that strikes a reasonable balance between the rights of individuals with a criminal history and property owners' requirement to provide safe housing can be found in Detroit. This ordinance prevents landlords from asking potential renters about their criminal background until the landlord has

determined that the candidate is qualified to rent under all other phases of the application process. At that time, the landlord may investigate the applicant's criminal history if they have determined the tenant is qualified to rent under all other phases. If the applicant is found to have a criminal history, the only crimes that may be considered include violent crimes, crimes resulting in a lifetime registry on the sex offenders list, arson, and felonies committed within the past 10 years or resulting in imprisonment within the past five years. If the landlord wants to deny an applicant based on their criminal history, the landlord must allow the applicant to provide evidence of rehabilitation that would show they are a good candidate despite their criminal record. Tenants also reserve the right to file a complaint with the City's Department of Civil Rights, Inclusion and Opportunity if they feel they have been discriminated against under the ordinance.

New York State already has a strong anti-discrimination policy for assessing justice-involved applicants for State-Funded Housing. This model could also be adapted to apply to all housing and also references as an appropriate category for consideration those convictions or pending arrests that involve physical violence to persons or property, or affected the health, safety and welfare of others.

Language that is too broad can have negative unintended consequences. The Council should thoroughly review all potential outcomes of this legislation in order to determine if such broad language will have negative impacts for not just individuals with a criminal history, but also those without one. In an effort to mitigate these negative ramifications, the Council should consider solutions that allow individuals with certain non-violent criminal convictions to expunge their criminal records, so that property owners conducting background checks do not have a history to contemplate in relation to a tenant's qualifications.

## **CONTACT(s):**

### **BASHA GERHARDS**

*Vice President Policy & Planning*  
Real Estate Board of New York

212.616.5254  
bgerhards@rebny.com