

EXHIBIT D



COUNCIL COMMITTEE MEMORANDUM

TO: Brian J. Anderson, City Administrator
FROM: Andy Bohlen, Police Chief
DATE: October 10, 2013
SUBJECT: Information on Central Avenue Concerns

DISCUSSION:

I wanted you aware of the ongoing police efforts to work with the downtown community on Central Avenue to alleviate some of the fears and cultural clashes taking place. The vibrant business community is surrounded by a very large diverse population, often observed standing in groups and walking along Central Avenue. Some business owners have approached me at meetings or at various times throughout the past year telling me about people blocking the sidewalks, entrances to doorways, impeding business traffic, and even alleged criminal activity and open drug transactions. Initially, I pulled statistical information from 2009-2012 on the 000 block to 700 blocks on Central Avenue and gathered information on thefts, burglaries, fight and assault calls, parking complaints, and alleged drug activity. Of the calls monitored, most remained steady each year. Minor theft calls appear to have increased, while more significant thefts (burglaries) have decreased. Assaults and fights remained on average about 1 reported per month. Overall parking complaints increased in 2011-2012, but that was most likely due to the fact that we were without a CSO to better service the public parking areas. Drug activity in that area was only about 3-7 calls per year even though two separate businesses reportedly observed between 4 and 10 drug transactions each. They both indicated they were too busy to report the information to police. Since our conversations they have been encouraged to call police anytime they felt criminal activity was taking place in front of their businesses.

Because there was such a concern, I had instructed my supervisory staff to funnel any additional resources onto Central Avenue, whenever the shifts contained adequate staffing. I also have asked our investigative division to make a list with photographs on people we know to be involved in ongoing criminal activity in that area and to target those specific individuals with a "zero tolerance" approach. I can tell you that four suspects that were responsible for a large portion of the recent problem calls downtown are now either deceased or incarcerated for criminal activity.

We recently hired a part-time CSO that focuses his efforts on parking enforcement and can often be observed walking on Central Avenue during afternoon and evening hours. Our officers have been tasked to increase a marked patrol presence and we have conducted several undercover operations

on Central Avenue between the Community Center and the 400 block of Central Avenue. Several of these operations were overtime shifts specifically set up to target south Willow Street through the north section of Central Avenue. The department has also set up a liaison with another law enforcement entity and utilized undercover officers and covert efforts to conduct surveillance, monitor activity, and attempt to capture and record those suspected of criminal activity. The undercover efforts will continue as staffing allows but each time an operation has been scheduled, they have yielded few arrests but they have allowed increased gathering of criminal intelligence data and shown a marked decrease in pedestrian traffic in problem areas.

There has been increased discussion of a revised loitering ordinance and references to examples in other communities. I have discussed this with the city attorney and recognize that this may be problematic and unenforceable. Often times these ordinances require officers to establish that other criminal activity is taking place. For example, a group of people simply standing on the street corner isn't illegal if they aren't planning a crime. Officers must approach the group and ask them what they are doing. If they say they are simply talking to their friends and no other crime is observed, it will be difficult for a judge to find guilt after a summons is issued. If someone loitering is drunk, disorderly, damaging someone's vehicle, smoking illegal substances, or caught breaking into someone's car, or harassing pedestrian traffic, then we have a potential crime.

For months, we have been working with Minneapolis Police Department and finally have the date of October 24th on the calendar. On that date, the police department plans to utilize Officer Mohamed Abdullahi (the first MN Somali officer), Somali community leader Asher Ali, Sgt Al Shuda, myself, and a local videographer to shoot a scripted video downtown. The goal of this video will be to market it to the new Somali refugees coming into town and distribute the video across FCTV, through the community center, and other Somali sources within the city. The video will touch on the need for everyone to feel safe and welcome in Faribault, cultural assimilation, how to work with police, trust law enforcement, relay common laws and ordinances, express pride in the community, and provide encouragement to report criminal activity. I believe building trusting relationships with the diverse downtown culture is vital to improve police and community relations, cooperatively work towards common goals, establish enforceable laws, and make genuine progress. The Somali culture is here to stay and I have personally observed intolerance from every direction in this city and it is not solely a problem with one ethnic group. They are a vital part of the Faribault economy, rent apartments downtown, and communicate differently than the long time residents. The new residents do not have a Somali paper, Somali TV station, and large yards to gather in so they do what their culture has taught them. They talk and visit on the street. Like all cultural groups, it is a very small percentage of any group that causes the largest amount of criminal activity.

As staffing allows, we will continue to make Central Avenue a priority for increased patrol efforts, examine realistic ways to enforce laws already on the books, and build better relationships with our business partners and all residents.

EXHIBIT E

FOLLOW-UP NOTES

**City of Faribault
City Council Joint Committee
Tuesday, March 18, 2014**

1. Call to Order

Mayor Jasinski called the meeting to order at 6:00 p.m. in the Council Chambers of the Faribault City Hall. Council members present included Duchene, Rowan, Underdahl, VanDyke, and Mayor Jasinski. Absent: Voracek and Walls. City staff present included City Administrator Brian Anderson, Police Chief Andy Bohlen, Community Service Officer Doug Delusha, Sergeant Mark Krenik, Building Inspector Dave Mathews, City Attorney Scott Riggs, Community Development Director Peter Waldock, City Planner David Wanberg.

2. EDA Enabling Resolution Update

Community Development Director Waldock summarized the EDA report on its annual review of the Establishing Resolution. This year the EDA recommended that the Establishing Resolution be amended to clarify the language on term limits. The Establishing Resolution as written does not clearly specify how to apply term limits when a new commissioner is appointed to complete the balance of a previous commissioner's term that had resigned before their term had ended. The EDA suggested that a limit of 12 consecutive years be retained and clarification be provided to specify that a commissioner's appointment would terminate at the end of their 12th consecutive year even if that commissioner had not finished his second full 6 year term.

The Council discussed the matter and had no objections to the EDA recommendations. It was the consensus of the City Council members that staff should proceed with a public hearing to amend the EDA Establishing Resolution accordingly.

3. Comprehensive Plan RFP Schedule Discussion

Staff will begin drafting the RFP for the City's Comp Plan that will be approved this summer which would allow work to begin in late summer or early fall. Council directed staff to put emphasis on working with the Chamber, School District, and others in creating the vision process and directed staff to perform as much work with staff as possible.

4. Rental Licensing Ordinance and Crime-Free Housing Program Discussion

Council directed staff to continue to move forward with the Crime-free Rental Ordinance as written. Council did inquire about the possibility of sharing criminal data amongst landlords, vacant registration program, and a staffing/budgeting review. This information will be brought back at an upcoming Joint Committee for further discussion.

The Council was interested in discussing language that would allow the City to enforce commercial property maintenance items. The first step may be to adopt the Commercial

Property under the Maintenance Code, which is currently under the housing code. Additional information will follow as further research is needed.

The Chief of Police and City Attorney stated that a loitering ordinance may only lead to legal issues when the real issues are more closely related to nuisance violations. Therefore, it was suggested that a more proactive and enforceable approach would be to address the issues as the City works through the recodification process over the next 15 months. We are not scheduled to address the Nuisance Chapter until January of next year but being we modified the schedule by removing the Unified Development Code (scheduled in June-Sept.) until the Comp Plan is complete, we may simply swap the chapters.

The Council also directed staff to research a Smoking Ban Ordinance, similar to the one Bloomington adopted in 2005. This will require a bit of staff time and will be brought back for further discussion.

Council also directed staff to draft language adjusting the City's ordinance making building permits to expire after 180 days, consistent with State Statute, instead of the City's current one year provision. This too will be executed through the recodification process.

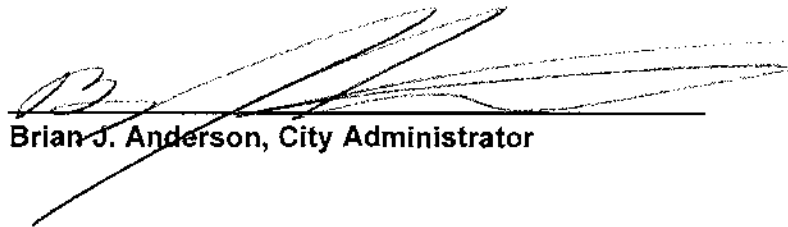
5. Security Bank Clock Restoration Discussion

Council gave staff the green light to draft easement language that would allow the City to restore the Security Bank Clock. Once the easement has been approved, the City would work with the Rotary and other organization in raising the necessary funds to complete the restoration. New bids are being pursued for the restoration.

6. Adjournment

The meeting was adjourned at 7:48 p.m.

Respectfully submitted,



Brian J. Anderson, City Administrator

EXHIBIT F



Council Committee Memorandum

TO: Joint Council Committee
THROUGH: Brian Anderson, City Administrator
FROM: Peter Waldock, Community Development Director
MEETING DATE: March 18, 2014
SUBJECT: Rental Licensing Ordinance & Crime-Free Housing Program

Background:

At the City Council Joint Committee meeting last October, the City Council heard concerns expressed regarding housing conditions in some rental units downtown and concerns with problem tenants in the community. The City Council directed staff to review the issues and recommend ways in which the City could address the issues.

As a follow up to this discussion, staff presented a number of ideas for the City Council to consider addressing the concerns. Among these was participation in a Crime-Free Multi-Housing Program and upgrading the rental registration ordinance to convert to a rental licensing program.

Discussion:

Crime Free Housing Program:

A number of Minnesota Cities are participating in crime free housing programs throughout the state. A Crime Free Housing Program (CFH) works to keep criminal activity out of rental property. The program was designed to make multi-family dwellings safe and desirable places to live. CFH is pro-property manager, pro-resident, and anti-crime.

The program uses a three-phase approach that ensures resident friendly techniques will be applied to maintain crime prevention goals. The three components that make up the program consist of property management training, security assessments, and resident training on watching for criminal activity.

Management Benefits:

- A stable, more satisfied resident base
- Increased demand for rental units with a reputation for active management
- Lower maintenance and repair costs

- Increased property values
- Improved personal safety for tenants, managers, and owners
- More time for routine management and less time on crisis control
- More appreciative neighbors

Law Enforcement Benefits:

- Tried and true crime prevention methods
- Proven drop in calls for service by up to 67%
- Improved quality of life for the community at large
- Teaches property managers and residents how to work with police and neighbors to keep drugs and other illegal activity out of rental property
- A community oriented policing approach to crime prevention.

The Police Department's 2014 budget includes \$20,000 for participation in the program. The funds will be used to cover increased staff costs for the CSO assigned to the program, start up costs, training, and implementation.

Proposed Rental Housing Licensing Program:

Staff is proposing a comprehensive revision of ordinances regulating rental housing in the City. This would be accomplished by replacing the current rental registration ordinance with a comprehensive new ordinance that establishes rental housing licenses in order to provide a means by which the City can revoke a property owner's privileges to rent residential units. Rental license revocation may be necessary in cases where the City has had to respond to an excessive number of nuisance complaints, property maintenance violations, police calls due to criminal activity, or where unsanitary conditions have been found on a recurring basis.

The proposed ordinance is based on ordinances currently in use by other Minnesota Cities. It is designed to assure that rental housing is operated and maintained so that it is decent, safe, and sanitary for its occupants and for neighboring property owners. It requires a license for rental dwellings and provides exemptions for certain types of occupants, such as relatives. The Ordinance creates a license application process, requires an occupancy register, and establishes occupancy standards.

The ordinance as proposed requires certain property owners to provide a local agent. It requires scheduled inspections, defines and prohibits disorderly conduct, and requires licensees and their tenants to participate in a crime free housing program, which includes among other things a crime free/drug free lease addendum requirement. When the rental dwelling is not operated in compliance with the requirements of the ordinance, the ordinance provides for the removal of tenants and a process for license suspension, revocation, denial and non-renewal.

The proposed ordinance requires rental property managers, designated agents or owners, to complete Crime Free Housing Program training. Based on the determined type of rental unit, an owner or manager may have up to four years to complete the training. The training requirement will apply to several hundred rental

property owners or their agents, or hired property managers in the City. There are currently over 600 rental properties and over 2500 rental housing units in Faribault.

The ordinance has a system of tiered license categories based on the number of property violations, police calls, and nuisance violations at the site. Properties that have few violations and remain at a high compliance level (type III), will only need to be inspected every three years. Properties that have many violations and a low compliance level (type I) will be inspected once a year until compliance levels improve for a two year period.

Key Features of the Proposed Rental Licensing Ordinance:

- Homestead Exemption: Single Family Dwellings that are homesteaded by the owner's relatives and are the only rental property the owner has is exempt.
- Snowbird exemptions are provided for property rented less than 120 days per year and occupied by its owner the balance of each year.
- Tiered Licensing Categories: Three license types with increasing frequency of inspections based on compliance levels (number of crime free program violations or property violations).
- Local Agent Required: Absentee Owners from out of state or not located in designated counties nearby, must have a local agent or manager from a county designated in the ordinance.
- Occupancy Limits: The ordinance includes occupancy limits and standards based on the City's Unified Development Ordinance and a minimum floor space per person.
- Rental License Suspension or Revocation: Rental licenses can be revoked, suspended or non-renewed for crime free program violations, uncorrected or repeated nuisance violations, failure to correct property violations, and failure to evict problem tenants. Reinstatement fees and administrative fees can be applied as well as a waiting period for reinstatement. Revoked landlords are not eligible for new licenses for another dwelling for 1 year.
- Disorderly conduct prohibited: Disorderly conduct by tenants and their guests on licensed properties is prohibited and may be grounds for suspension, nonrenewal or revocation after repeated instances.
- Appeal Hearing: Rulings and findings by the compliance official can be appealed to the City Council. An appeal hearing would then be held by the City Council to make a final determination in the matter.
- Crime Free Housing Program Training: An 8-hour training course provided by police, fire and public housing officials and others is required. Crime Free Housing Program courses completed by owners or agents at approved courses in other Minnesota Cities may be accepted for compliance.
- Crime Free/Drug Free Housing Leas Addendum: Licensed properties must have written leases with the crime free/drug free housing addendum.

Violation of this lease addendum by the tenant would be grounds for termination of tenancy.

- Criminal Background Checks are required for tenants of licensed properties.
- Regular inspections required to determine compliance with this ordinance, nuisance ordinances, property maintenance codes, and other city ordinances such as zoning codes.
- Effective Date January 1, 2015: We are just completing the second year of the current two year rental registration cycle, staff recommends that the new regulations start next year at the beginning of a new program cycle, rather than changing the rules during the current cycle. This will allow time for training and preparations for program implementation.

Licensing and other program fees will be set by City Council Resolution. Reinspection fees and delinquent payment charges are proposed. The proposed fees will be similar to those charged by other Minnesota Cities with rental licensing programs.

Proactive property maintenance code programs start with residential rental properties through this licensing ordinance and can eventually extend to commercial properties downtown then, commercial and industrial properties citywide.

Other code and ordinance reviews underway:

- Loitering and smoking regulations
- Building permit sunset (expiration) provisions, changing to six months from the current one year time period.

The City Council is asked to discuss this ordinance proposal and provide feedback and direction to Staff.

Attachments:

- Draft Ordinance
- Rental License Category Policy
- Crime Free /Drug Free Housing Lease Addendum

EXHIBIT G

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

THELMA JONES, PRIYIA LACEY, FAISA ABDI, ALI
ALI, RUKIYA HUSSEIN, LUCIA PORRAS, DAVID
TROTTER-FORD, AND SOMALI COMMUNITY
RESETTLEMENT SERVICES, INC.,

Plaintiffs,

v.

CITY OF FARIBAULT,

Defendant.

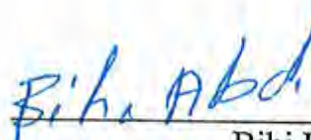
Case No. 18-CV-01643
(JRT/HB)

**AFFIDAVIT OF BIHI HIRSI
ABDI**

The undersigned affiant, Bihi Hirsi Abdi, having been duly sworn, hereby
deposes and says,

1. I am not a part to the lawsuit for which I am providing this affidavit.
2. I am from Mogadishu, Somali. I have lived in Faribault since 2007.
3. I regularly interact with people of Somali descent as an elder in the City of Faribault.
4. I am a Mu'adin at the Mosque.
5. Over 400-450 people show up to Friday prayer.
6. 98% of the population is Somali


December 12, 2019.



Bihi Hirsi Abdi

Sworn to me before this 12 date of

December, 2019



Notary Public

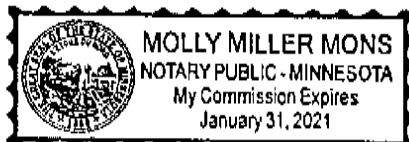


EXHIBIT H

State of Minnesota
County of Rice

CITY OF FARIBAULT

RESOLUTION #2014-205 **PURCHASE OF A CAMERA SURVEILLANCE SYSTEM FOR THE DOWNTOWN** **HISTORIC DISTRICT OF FARIBAULT**

WHEREAS, The City of Faribault values the historic business and residential areas near Central Avenue in downtown Faribault and local businesses, the EDA, the HRA, the Main Street Group, and the City of Faribault are always seeking ways to improve the city, and;

WHEREAS, a determination that a surveillance camera system could reduce criminal activity, create a sense of safety, allow the police department to better work with business owners to track issues, public complaints, nuisances violations, and;

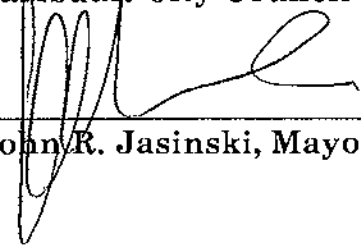
WHEREAS, the Faribault City Council and City Staff directed a public Request for Proposal process to seek camera vendors to provide effective services and a vendor was selected through a competitive process, and;

NOW, THEREFORE BE IT RESOLVED, that the City of Faribault has selected Parallel Technologies to install and provide a camera system for the historic downtown area based on a complete turnkey system, quality, competitive pricing, expandable capabilities, and service.

ALSO, BE IT RESOLVED, that City of Faribault shall purchase the Parallel Technology camera system for \$43,204.35 by utilizing funds from the HRA, EDA, and Police Department DUI and drug forfeiture accounts.

Date Adopted: November 12, 2014

Faribault City Council


John R. Jasinski, Mayor

ATTEST:

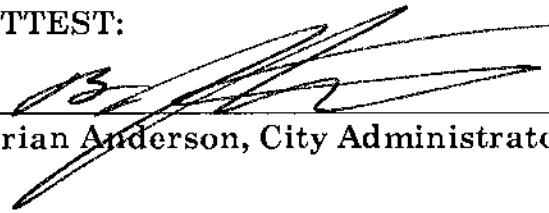

Brian Anderson, City Administrator

EXHIBIT I

Faribault City Council Minutes
Regular Council Meeting of Wednesday, November 12, 2014

1. Call to Order / Roll Call/Pledge of Allegiance

Mayor Jasinski called the meeting to order at 7:00 p.m. in the Council Chambers of the Faribault City Hall. Council members present included Albers, Duchene, VanDyke, Voracek, and Mayor Jasinski. Absent: Council member Rowan and Underdahl. City staff present included Administrator Brian Anderson, Public Works Director Travis Block, Police Chief Andy Bohlen, Community Development Coordinator Kim Clausen, Fire Chief Dustin Dienst, Building Official Al Ernste, Finance Director Karla McCall, City Engineer Tim Murray, Acting Community Development Director Peter Waldock and Deputy City Clerk Carole Dillerud

2. Approve minutes of October 28, 2014 Regular Council Meeting

Motion by Council member Albers, seconded by Council member Duchene, carried unanimously, to approve the minutes of the October 28, 2014 Regular Council Meeting

3. Routine Business

Motion by Council member Duchene, seconded by Council member VanDyke, carried unanimously, to approve items A – J.

- A. Approve list of bills to be paid
- B. Approve Hangar Rental Agreements
- C. Approve Seasonal Bids for Miscellaneous Services
- D. Resolution 2014-193 Approve Amendment to Amendment and Restated Grant Agreement for the Neighborhood Stabilization Program
- E. Resolution 2014-202 Approve Continued Financial Support of \$600 Police Contribution to the SMART Ride Program
- F. Resolution 2014-203 Approve Police Department Policies 218, 314 and 315
- G. Approve Selection of Engineering Consulting Firm for Bridge Improvement Projects
- H. Resolution 2014-204 Canvass General Election Results
- I. Approve City of Faribault Police Towing Services RFP 2015-2016
- J. Approve Ordinance Summary for Ordinance 2014-014 Lodging Tax

4. Requests to be Heard
Citizen Comment Period

5. Public Hearing – None

6. Items for Discussion

A. Ordinance 2014-015 Vacating a Drainage and Utility Easement on a Parcel at 3801 Park Avenue NW. Second reading.

Acting Community Development Director Peter Waldock requested Council consideration of approval Ordinance 2014-015 for the property located at 3801 Park Avenue NW, for the proposed drainage vacation and utility easement. No additional comments were received from the public since the first reading on October 28, 2014.

No one from the public wished to be heard on this item.

Motion by Council member Duchene, seconded by Council member Albers, carried unanimously, to Ordinance 2014-015 Vacating a Drainage and Utility Easement on a Parcel at 3801 Park Avenue NW. Second reading.

B. Ordinance 2014-016 Amend the Faribault Code of Ordinances, Chapter 7, Building and Building Regulations, Related to Rental Housing Licenses

Acting Community Development Director Peter Waldock requested Council consideration to amend Chapter 7. The revisions address issues related to the implementation of the rental housing programs regarding the billing cycles, penalty fees and department name. Staff recommended changes to provisional licenses, license renewal and expiration dates, license fees, and delinquent payments. It was also recommended that the Community and Economic Development Department name be corrected in the ordinance. The Program becomes effective January 1, 2015.

Council discussed the 15% delinquency charge and cut-off date, the rolling calendar regarding renewal period, and multiple property owners.

Finance Director McCall stated that the invoices would have the delinquency/late fee printed on the statement.

Waldock clarified that the renewal period would be staggered. Staff will coordinate with owners of multiple properties to create a consistent renewal timeframe and schedule inspections accordingly. The staggered renewal periods may also help eliminate income-related peaks and valleys.

No one from the public wished to be heard on this item.

Motion by Council member Duchene, seconded by Council member Albers, carried unanimously, to approve Ordinance 2014-016 Amend the Faribault Code of Ordinances, Chapter 7, Building and Building Regulations, Related to Rental Housing Licenses. First reading.

C. Resolution 2014-205 Approve Downtown Camera Vendor for Installation of System After Reviewed RFP Data

Police Chief Andy Bohlen presented for Council approval the request for the purchase, and installation of, the downtown Faribault surveillance camera system. The cameras would allow the police department to better work with the downtown business owners to track issues and complaints, i.e., blocking sidewalks, property damage, and other nuisances related to City code.

Six proposals were received, which were reviewed by City IT staff, Logicnet staff, police chief and police staffers. The range, quality and reliability of the equipment and services were considered. Staff recommended awarding the contract to Parallel Technologies in the amount of \$43,204.35. The project will be funded by the \$15,000.00 authorized by the HRA and EDA, and \$28,204.35 from the police drug and DUI forfeiture fund.

Council inquired about the location and height for the cameras, cold weather rating, equipment life expectancy, possibility of a 'downtown' camera, and duplication of services through the City website.

Chief Bohlen stated that the cameras would be mounted to the 30 foot poles located on the corners of 2nd, 3rd and 4th and Central Avenue.

Brad Johnson, LogicNet, reported that the cameras had a 3-year warranty with a life expectancy of 6 years, and were cold weather rated up to 40 below. A downtown camera had not been discussed but could be considered.

Motion by Council member VanDyke, seconded by Council member Voracek, carried unanimously, to Approve Resolution 2014-205 Approve Downtown Camera Vendor for Installation of System, Awarding the Contract to Parallel Technologies for the amount of \$43,204.35

D. Resolution 2014-206 Approve Used Police Squad Donation to Riverland Community College

Police Chief Andy Bohlen requested Council to approve the donation of a squad car to Riverland Community College. The college was seeking donations of an old police squad car to be used for adult student training for traffic stops and police response procedures. The 2011 Ford Crown Victoria was removed from the City's fleet and waiting auction. The equipment inside the car does not retrofit in the new sedans or SUV's. Chief Bohlen stated the City continue to have a good relationship with staff and utilize their students during yearly local school exercises.

Rich Watkins, Riverland College instructor and retired Faribault police sergeant, encouraged the Council to support the donation of the vehicle. The realistic equipment would assist the students, provide hands-on tactical equipment training, and be a tremendous asset to the program.

Council expressed their support of the vehicle donation and the on-going relationship with the college.

Motion by Council member Duchene, seconded by Council member VanDyke, carried unanimously, to Approve Resolution 2014-206 Approve Used Police Squad Donation to Riverland Community College

E. Fire Department Purchase of an Emergency Response Trailer

Fire Chief Dustin Dienst requested authorization to purchase an 18' emergency response trailer for the Fire Department. The multi-purpose trailer would also serve as a command center at incidents, utilized as a rehab shelter for fire fighters and first responders when needed, and house the Polaris Ranger currently stored inside the station. The Minor Equipment Budget would fund this purchase.

Finance Director McCall clarified the transfer of funds from the CIP from the Fire Department Operating Budget.

Council expressed concern about the equipment start-up, if stored outside; the purchase was a low cost expense, and assisted with the space needed to continue efficient operations.

Chief Dienst stated that all the equipment was on a regular maintenance schedule.

No one from the public wished to be heard on this item.

Motion by Council member Duchene, seconded by Council member Albers, carried unanimously, to Approve the Purchase of an 18' Emergency Response Trailer for the Fire Department

F. Petition and Waiver for Sanitary Sewer Installation Located at 215 Western Avenue N

Public Works Director Travis Block provided a brief overview of the sanitary sewer installation for the property located at 215 Western Avenue North. Per City ordinance Section 21-1, all property owners are required to hook-up to City services when it becomes available.

Building Official Al Ernste had received a Petition and Waiver request from the property owner, Patrick Meitz. By granting the waiver, the City would finance \$8,300.00 of the cost for project with the improvements and levy assessed against the property.

Council members inquired as to when the crushed septic tank was discovered, and the proposed timeframe to correct it.

Mr. Meitz provided a brief background of how the situation occurred and his willingness to correct the situation, with the intent to hook-up before winter. The approximate total cost of the sanitary sewer installation was \$13,500.00.

Motion by Council member Voracek, seconded by Council member VanDyke, carried unanimously, to Approve the Petition and Waiver for Sanitary Sewer Installation Located at 215 Western Avenue N

7. Bids – None

8. Announcements and Project Updates

Mayor Jasinski requested that the Community Vision Steering Committee report be sent to all Council members and the City website; very informative. The Focus Group was meeting on November 13, 2014.

9. Adjournment

Motion by Council member Albers, seconded by Council member VanDyke, carried unanimously, to adjourn the meeting at 7:51 p.m.

Respectfully submitted,



Carole Dillerud, Deputy City Clerk

EXHIBIT J



Request for Council Action

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Andy Bohlen, Chief of Police
Deanna Kuennen, Com. & Econ Dev Director
MEETING DATE: October 8, 2019
SUBJECT: Ordinance 2019-17 Repealing and Replacing Sec. 7-36 through Sec. 7-45 of Article V of Chapter 7 of the Faribault City Code - First Reading

Background:

The City of Faribault has a Rental Licensing Program – Article V of Chapter 7 of the Code of Ordinances. The purpose of the program is to assure that rental housing in the City of Faribault is decent, safe and sanitary and is operated and maintained so as not to become a nuisance to the neighborhood or to become an influence that fosters blight and deterioration, or creates a disincentive for reinvestment in the community. The most recent version of the Ordinance was adopted in 2017. While the Ordinance has been serving its stated purpose by both reducing criminal activity in the residential rental market, reducing service calls to problem properties, as well as providing the City with a mechanism to assure rental units are properly maintained and operated for the residential tenant – Staff is recommending that additional modification be made to clarify the obligations and procedures of the current ordinance, and add additional standards that reflect current best practice benchmarks and industry standards.

Staff has compiled the attached Memo to provide background and supporting information associated with the existing program and the recommended Ordinance changes. The Memo addresses the history of the elements contained and incorporated within the Ordinance (Crime Free Multi Housing and Rental Licensing and Inspections), policies and standards covered by the program, basis for the program, results of the program, and recommended changes to the rental licensing and crime free ordinance. The recommended changes to the Ordinance focus on:

- Removal or redundant and unnecessary language
- Correction of clerical errors

- Clarifications to a landlord's obligations under the Ordinance as well as the City's enforcement procedures

Recommendation:

Staff recommends the Council adopt Ordinance 2019-17, which clarifies the obligations and procedures of the current ordinance, while retaining all the aspects that led to the positive outcomes described in this report, as well as additional standards reflecting current best practice benchmarks and industry standards. The following summarizes the proposed changes:

Attachments:

- Ordinance 2019-17 An Ordinance Repealing and Replacing Sec. 7-36 through Sec. 7-45 of Article V of Chapter 7 of the Faribault City Code.
- Memo – City of Faribault, Rental Licensing Program – Background, History, Standards, Basis, Results, and Recommendations

EXHIBIT K



MEMO

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Andy Bohlen, Chief of Police
Deanna Kuennen, Com. & Econ Dev Director
SUBJECT: City of Faribault, Rental Licensing Program –
Background, History, Standards, Basis, Results, and
Recommendations

Background:

The City of Faribault has a Rental Licensing Program – Article V of Chapter 7 of the Code of Ordinances. The purpose of the program is to assure that rental housing in the City of Faribault is decent, safe and sanitary and is operated and maintained so as not to become a nuisance to the neighborhood or to become an influence that fosters blight and deterioration, or creates a disincentive for reinvestment in the community. The most recent version of the program was adopted in 2017. The following provides background information on the history of the elements contained and incorporated within the program, policies and standards covered by the program, basis for the program, results of the program, and recommended changes to the rental licensing and crime free ordinance.

- **History of the CFMH Program:**

The City of Faribault has incorporated Crime Free Rental Housing into its Rental Licensing program. The City's Crime Free Rental Housing Program is based on the Minnesota Crime Prevention Association's Crime Free Multi-Housing ("CFMH") program, which in turn is based on the International Crime Free Association's CFMH Program. CFMH is a crime-prevention initiative designed to help rental property owners, managers, residents, police and other agencies work together to eliminate illegal and dangerous activity from rental properties.

The first CFMH program was developed in 1992 by Reserve Officer Timothy Zehring, a crime prevention specialist with the Mesa, Arizona, Police Department. The Mesa Police Department needed an effective strategy to reduce criminal activity both in and outside of rental properties, as well as to increase the safety and sense of security for all residents, and Zehring was tasked with designing a program to address these concerns. Zehring researched the rental properties with the highest calls for service and found the police department was having difficulty preventing crime in and around rental properties because rental properties attracted non-residents with criminal intent, and some tenants, owners, or landlords did not care about the property they lived in, and would not or could not maintain the safety and security of the rental property. Using research-based crime prevention strategies, Zehring developed what has become the Crime Free Multi-Housing approach to crime prevention.

Key Aspects of the CFMH Program

Training

Landlords and/or property managers are required to attend a day long training, which is focused on teaching them about crime prevention. Law enforcement is generally limited to taking a reactive approach to fighting crime, i.e., responding to a call for service regarding a crime in progress and investigating who is responsible. Crime prevention, however, is focused on taking a proactive approach to fighting crime. This is a more desirable approach because it addresses the potential for crime before it becomes a serious problem.

As such, the required training is focused on making it clear to landlords and property managers that they have a key role to play in preventing crime on their properties and ensuring their tenants are safe and secure in their homes. The theme of the training is landlords and property managers must take an active role in managing their properties by being present as opposed to absent. The objective of the training is to learn active management principles and techniques that assist in keeping illegal and dangerous activities off the property.

Improving the Physical Environment

Crime Prevention Through Environmental Design, or "CPTED", is a crime prevention philosophy based on the theory that proper design and effective use of a built environment can lead to a reduction in the fear and incidence of crime, as well as an improvement in the quality of life.

The goal of CPTED is to address any weaknesses in the built environment that could be exploited by a potential criminal, thereby preventing the opportunity for crime to occur. CPTED can reduce crime and fear by decreasing criminal opportunity and fostering positive social interaction among those who are using a space for its intended purpose.

Community Awareness

The third key feature of CFMH is community awareness. Many programs accomplish this feature through social meetings, which include management, residents, and law enforcement, where general safety principles and crime prevention tips are discussed.

The City of Faribault's Crime Free Rental Housing Program:

In 2007 and 2008 the City began exploring implementing a Crime Free Rental Housing Program aimed at reducing crime and service calls to problem properties within the City. At that time, the City Council was supportive of the concept and directed staff to work towards implementing the program.

Due to budget constraints and cuts in the Faribault Police Department personnel, specifically the full-time Community Service Officer Supervisor position, the program was not implemented.

Nevertheless, the Police Department maintained the program was a necessary and beneficial crime prevention effort. The program continued to have administrative support during the tenure of Former Police Chief Dan Collins and Interim Police Chief Don Gudmundson, and it was a key recommendation of a 2012 Best Practices Assessment commissioned by the City.

In the spring of 2013, the City Council held its Annual Strategic Planning session with the department directors and determined that due to the number of new directors and Council Members, an outside consultant would be hired. The City hired Dave Unmacht to facilitate the planning session and prepare a draft strategic plan.

The resulting Strategic Plan identified four priorities, which represented the most important policy issues facing the City at the time as well as into the immediate future. Each priority included a list of objectives focused on achieving the City's priorities through specific projects and

activities. Among these objectives was the implementation of the CFMH Program.

The City Council approved the 2013 Strategic Plan in the summer of 2013 and staff began working toward accomplishing the objectives noted in the Strategic Plan, including reestablishment of the CFMH Program, within the next year.

Since that time the City has implemented two different variations of the CFMH Program and has witnessed both tangible and intangible benefits as a result of the program, which are further detailed below.

Relationship to the CFMH Program: The City's Crime Free Rental Housing Program incorporates each of the key aspects of a traditional CFMH program in a variety of different ways.

Training

City staff continues to educate local rental property owners on the Crime Free Rental Housing Program. Since January of 2015, 225 rental property owners have completed the crime free training offered through the Police Department. The experience of City staff has validated this training is needed and beneficial. Many landlords and property managers have entered the training with a belief they are not responsible for the criminal conduct on their premises if they remain willfully unaware of what is happening. Yet they leave with a clear understanding they will be held accountable if they refuse to take an active role in managing their properties, and a better understanding of the tools they have at their disposal to make their communities more safe and secure for the inhabitants.

Community Awareness

Since 2009, the City has promoted, and the Police Department has actively participated in, the Night to Unite Program. This program corresponds with the community awareness aspect of the CFMH model because Faribault's Night to Unite was developed to help restore a sense of unity, strengthen neighborhood spirit, and promote community dialogue and positive relations with the police department.

As Mayor Voracek stated in his July 23rd Proclamation, Night to Unite "is designed to get to know one another in your neighborhood, build neighborhood involvement by bringing police and communities together; and to bring an awareness to crime prevention and local law

enforcement efforts[.]” Night to Unite supports the idea that crime prevention is an inexpensive, effective tool in strengthening police and community partnerships. Night to Unite provides opportunities to celebrate the ongoing work of law enforcement and neighborhoods in Faribault by working together to fight crime and victimization and increase public safety for all citizens. The City continues to encourage citizens to participate in Night to Unite, in recognition that the citizens of Faribault play an important role in assisting the Faribault Police Department through joint crime, drug and violence prevention efforts.

Improving the Physical Environment

Since its inception, the City’s Crime Free Rental Housing Program has been directly tied to the City’s Rental licensing and inspection program. As noted above, this connection is key to a successful CFMH Program because rental properties failing to meet minimum code standards are easy targets for would-be criminals. More importantly, individuals who are subjected to sub-standard living conditions are more likely to develop mental health issues such as depression and increased hostility and are less inclined to care about the property they live in or take steps to maintain the safety and security of the rental property.

- **City’s Rental Licensing and Inspection Program:**

According to the Comprehensive Plan, “[t]he provision of safe and decent housing is an essential objective of” the City. Additionally, the Comprehensive Plan recommends attaining this objective by encouraging the maintenance of the existing housing stock and the prevention of blight, as well as through the provision of a sufficient supply of adequate, safe, and sanitary dwellings in order to protect the health, safety, morals, and welfare of the citizens of our community. These compelling goals are realized through the City’s adoption and implementation of the Rental Licensing and Inspection Program.

The City requires every dwelling unit being rented must have a rental license prior to renting. The City’s local housing stock is one of its most important assets and the rental license and inspection program helps to prevent poor living conditions, maintenance issues, and other livability issues that can affect both quality of life and the local tax base.

The focus of the Rental Licensing and Inspection Program is to promote the health, safety, and welfare of residents living in rental property.

Rental housing conditions that adversely affect or are likely to adversely affect the life, safety, general welfare and health of renters can be corrected and prevented by enforcing minimum standards within the city.

Additionally, it provides a mechanism for the City to maintain property values and ensure the quality of the community's housing supply. By maintaining the quality and stability of rental dwelling units, the City preserves the value of land and buildings throughout Faribault.

Staff biennially inspects both the interior and exterior of all rental dwelling units within the City for compliance with the City's Property Maintenance Code. They also respond to complaints concerning rental properties and systematically inspect the exterior of rental units throughout the year.

Policies and Standards Covered by the Rental Inspection and Licensing Program

The following is an overview of issues addressed through the City's Rental Licensing and Inspection Program

General Requirements

The general requirements contained in the City's Property Maintenance Code are intended to maintain a minimum level of safety and sanitation for both the general public and the occupants of a structure, and to maintain a building's structural and weather-resistance performance. Included within the general requirements are specific criteria for regulating the installation and maintenance of specific building components; maintenance requirements for vacant structures and land; requirements regulating the safety, sanitation and appearance of the interior and exterior of structures and all exterior property areas; accessory structures; and, vehicle storage regulations. Importantly, the general requirements of the City's Property Maintenance Code also contain standards relating to building security, door locks, and premise identification.

These requirements also establish the responsible parties for exterminating insects and rodents and maintaining sanitary conditions in all types of occupancies. Concerns about insect and rodent infestations were one of the driving concerns behind the initial adoption of the program, and staff's experience inspecting rental properties

validated these concerns are real. Since 2015 significant steps have been made to eliminate infestation issues in Faribault's rental properties.

Light, Ventilation, and Occupancy Limitations

The City's Property Maintenance Code contains requirements establishing the minimum environment for occupiable and habitable buildings, by establishing the minimum criteria for light and ventilation and identifying occupancy limitations including minimum room width and area, minimum ceiling height and restrictions to prevent overcrowding.

According to HUD, overcrowded housing is housing that does not provide adequate space and privacy for all intended household members. The result of overcrowded housing, according to HUD, is unsafe and substandard living conditions. This conclusion is supported by academic and scientific research, which indicates overcrowding is associated with depression, increased aggression and hostility, social withdrawal, and poor maintenance of supportive relationships. Overcrowding has been shown to be especially harmful to the growth, development, and wellbeing of children exposed to such living conditions. Children subject to unsafe and substandard overcrowded living conditions are at increased risk of poor educational performance, poor physical and mental health, and increased feelings of helplessness and distress. Importantly, the effects of overcrowding are not easily reversed, as research indicates these negative outcomes persist well into adulthood. As such, overcrowding is an issue with the potential to significantly impact the health, safety, and welfare of Faribault citizens, and it is why the City has adopted the International Property Maintenance Code, which represents the industry standard and best practices benchmark for how issues such as these should be regulated.

Plumbing Facilities and Fixture Requirements

Sanitary and clean conditions in occupied buildings are dependent upon certain basic plumbing principles, including providing potable water to a building, providing the basic fixtures to effectively utilize that water and properly removing waste from the building. The City's Property Maintenance Code establishes the minimum criteria to verify that these principles are maintained throughout the life of a building by specifying standards for the installation, maintenance and location of plumbing

systems and facilities, including the water supply system, water heating appliances, sewage disposal system and related plumbing fixtures.

Mechanical and Electrical Requirements

The City's Property Maintenance Code contains requirements establishing minimum performance requirements for heating, electrical, and mechanical facilities and establishes minimum standards for the safety of these facilities.

Fire Safety Requirements

Many fire safety regulations are established through the City's Fire Code. The City's Property Maintenance Code supplements these standards with requirements for means of egress in existing buildings, including path of travel, required egress width, means of egress doors and emergency escape openings, as well as minimum requirements for fire safety facilities and fire protection systems, as these are essential fire safety systems. These requirements are intended to address those fire hazards that arise as the result of a building's occupancy, as well as provide minimum requirements for fire safety issues that are most likely to arise in older buildings.

- **Basis for the City of Faribault's Crime Free Rental Housing Program and Results:**

In late-2012, the City hired Andy Bohlen to serve as the City's Police Chief. Prior to coming to Faribault, Chief Bohlen worked in law enforcement for nearly 23 years in other jurisdictions and had familiarity with the positive community impacts of the CFMH Program. For instance, as the Commander of the Dakota County Drug Task Force, Chief Bohlen supervised a group of agents who served nearly 500,000 residents within 12 communities. They executed 226 high risk warrants in a year and quickly recognized communities that had repeat problems at the same rental properties. On the other hand, the cities that participated in the CFMH Program were proactive, had better cooperative relationships with law enforcement, and improved quality of life on rental properties by reducing calls for service.

Prior to enacting the Rental Licensing Ordinance, Chief Bohlen publicly referenced a few properties where officers repeatedly responded over the course of a year. These calls were often volatile and resulted in

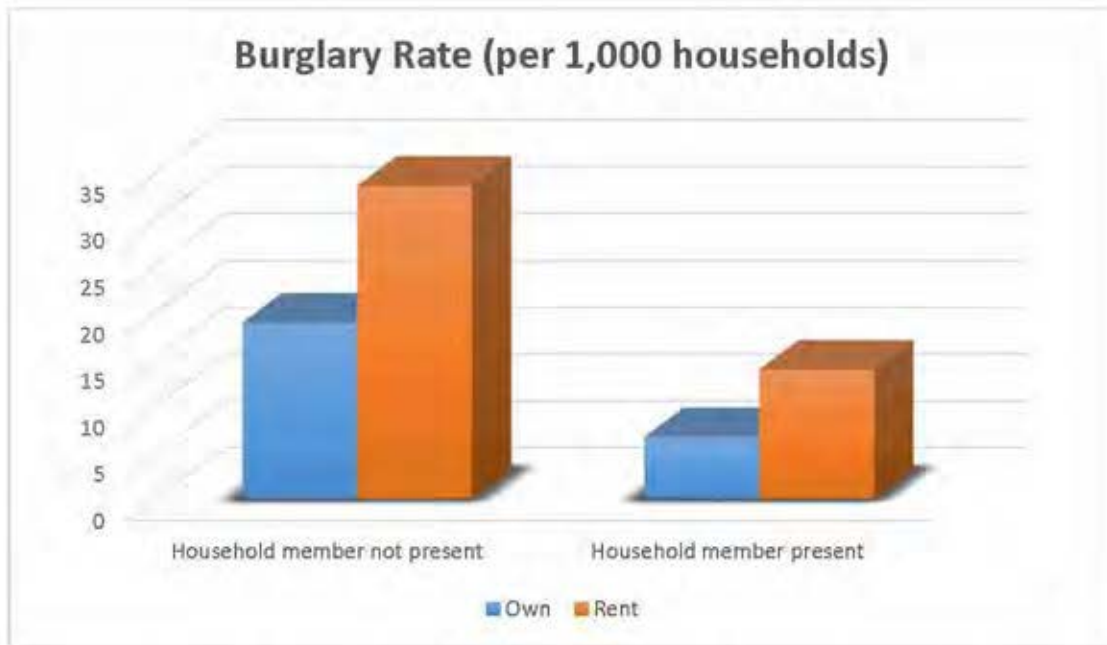
considerable expense. Many times, the landlords were unaware their tenants were disrupting the harmony of other neighboring rental properties and adjacent owned properties. In 2014, Chief Bohlen also noted the City's overall crime rate was much higher than similarly-sized cities within Minnesota. The City's crime rate was in the top 10-15% in the State. In cities with a population of 15,000 to 30,000, the City was ranked number 5 in the entire state. Additionally, the theft rate was higher than the state and national average. That placed the City in the top 10% of crime rate per capita. These statistics were unacceptable and detrimental to the quality of our community and rental base.

The implementation of the Crime Free Rental Housing Program has had a significant positive impact on the City. There has been a notable reduction in the crime rate and a reduction in calls-for-service to the same problem properties where drug and violent criminal activity was rampant.

Since adoption of the crime free housing program, the City's overall crime rate has dropped nearly 13%. Today, the City is rated number 107 out of all reporting 278 cities reporting crime data in the State. That places the City in the top 38.5%, a significant reduction in crime. Today, the City once listed at number 5 has reduced its crime rate and moved down to number 14 in the same similar-sized cities in the four years of the program's existence. The reduction in the City's overall crime rate is reflected by the more detailed statistics below.

Burglary

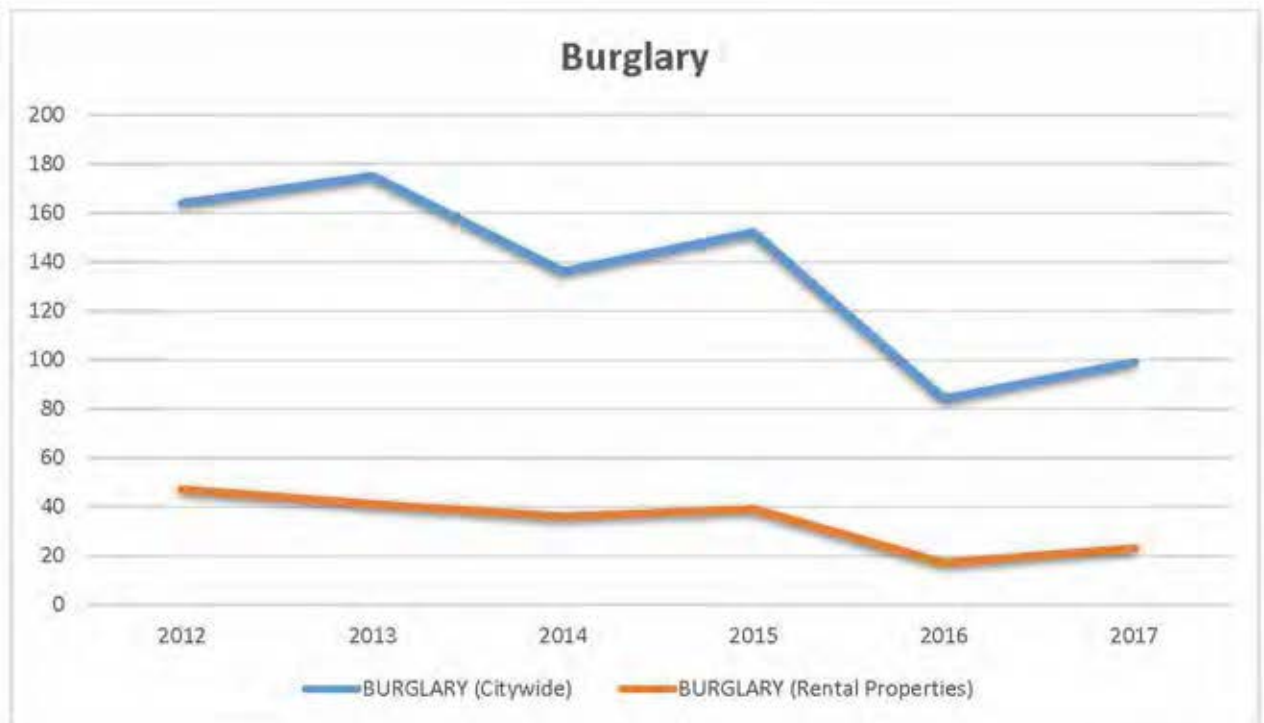
Burglary is a crime that affects renters to a greater degree than homeowners. According to the Bureau of Justice Statistics the risk of burglary is drastically higher for individuals living in rental properties than for individuals who owned or were in the process of buying their homes.



Burglary Rate (per 1,000 households)

<i>Tenancy Characteristics</i>	Household member not present	Household member present
<i>Own</i>	18.9	6.7
<i>Rent</i>	33.5	13.9

As such, burglary is a key crime statistic to consider in judging the efficacy of the Crime Free Rental Housing Program. A review of the City's crime statistics reveals that since the implementation of the Crime Free Rental Housing Program, the City has achieved an unprecedented reduction in the amount of burglaries both on rental properties and city wide.



<i>Crime Category</i>	2012	2013	2014	2015	2016	2017
<i>Burglary (Citywide)</i>	164	175	136	152	84	99
<i>Burglary (Rental Properties)</i>	47	41	36	39	17	23

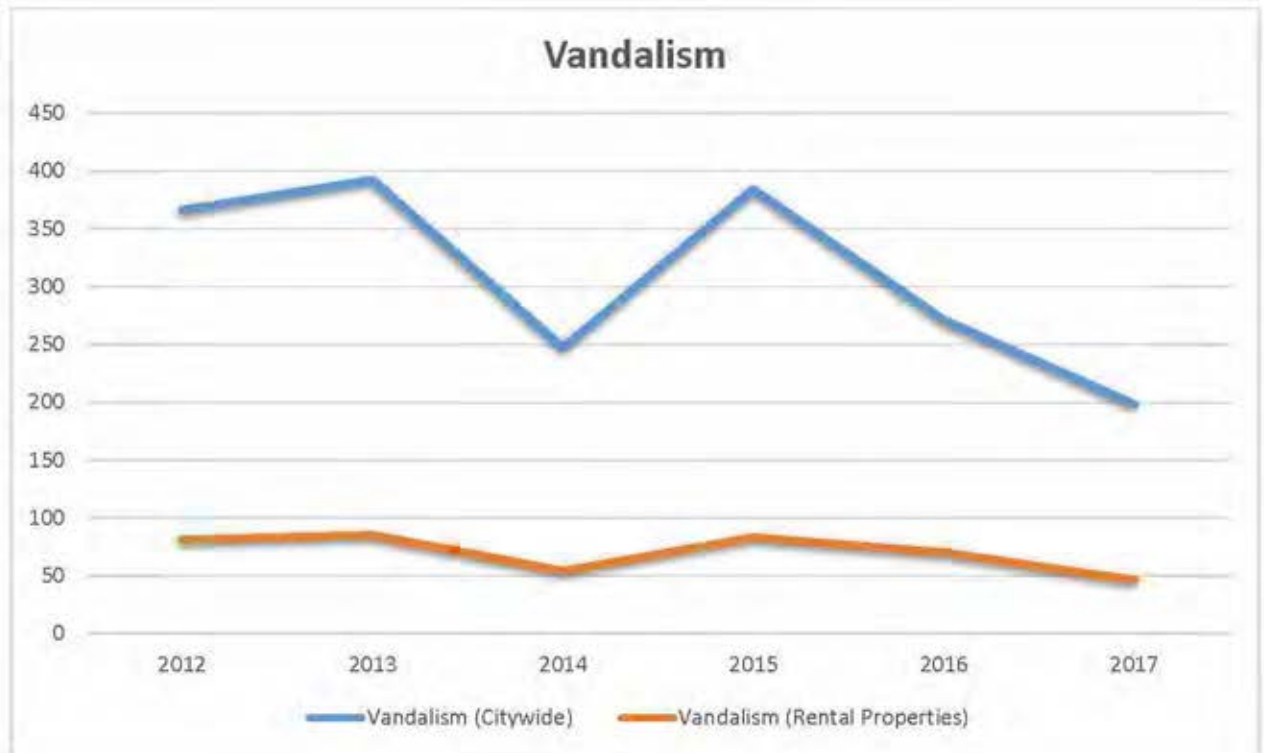
The crime data from 2012-2014 has been included to put these statistics in the proper context. Viewing the statistics from 2012-2015 (the first year the Crime Free Rental Housing Program) alone might lead to the impression that the Crime Free Rental Housing Program actually caused an increase in burglary in the City. But, as is the case with any proactive policing effort, the crime rate will get worse before it gets better because more resources and additional efforts are put toward addressing crime. Such is the case here, as the minor spike in 2015 yielded major reductions in 2016 and 2017, which far outpaced the previous trend.

In the four years prior to the implementation of the Crime Free Rental Housing Program, the City averaged roughly 157 burglaries per year citywide, and roughly 41 burglaries per year on rental properties. Since the implementation of the Crime Free Rental Housing Program, the City

has consistently had less than 100 burglaries citywide and has cut the incidence of burglaries on rental properties in half. Given the importance of burglary in judging the efficacy of the Crime Free Rental Housing Program, it is clear from these statistics the program has had a significant effect on crime in the City. It should be obvious any reduction in crime attributable to the program is beneficial and should warrant a continued commitment to the program. Nevertheless, burglary is not the only crime which has been reduced as a result of the program.

Vandalism

Vandalism is another statistic that can provide valuable insight into the efficacy of the Crime Free Rental Housing Program. In 2012, Interim Chief Don Gudmundson publicly discussed the importance of vandalism, and mentioned that by reducing vandalism, the City could reduce other crimes by improving the quality of life in our community. This is part of a broader theory on policing, which suggests that failure to control minor offenses destabilizes neighborhoods by creating a sense of public disorder. This makes people more likely to turn to crime in neighborhoods where toleration of petty crimes—such as graffiti and vandalism—indicated a lack of effective social control. Aggressively policing minor crimes not only reduces neighborhood fear, but it substantially reduces other crimes, including more serious violent crimes. Academic research has validated this method of policing leads to statistically significant reductions in crime in general, but also significant decreases in violent crime.

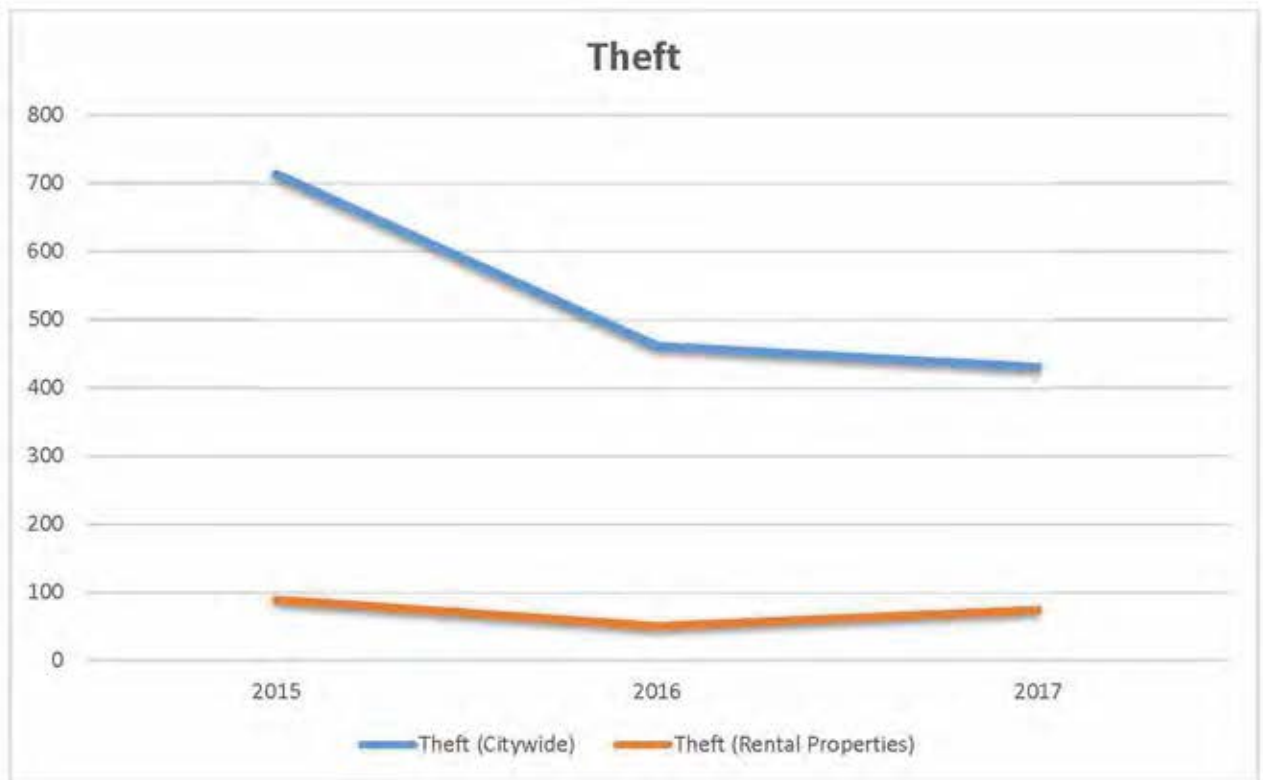


<i>Crime Category</i>	2012	2013	2014	2015	2016	2017
<i>Vandalism (Citywide)</i>	366	392	247	384	271	198
<i>Vandalism (Rental Properties)</i>	81	85	54	83	70	46

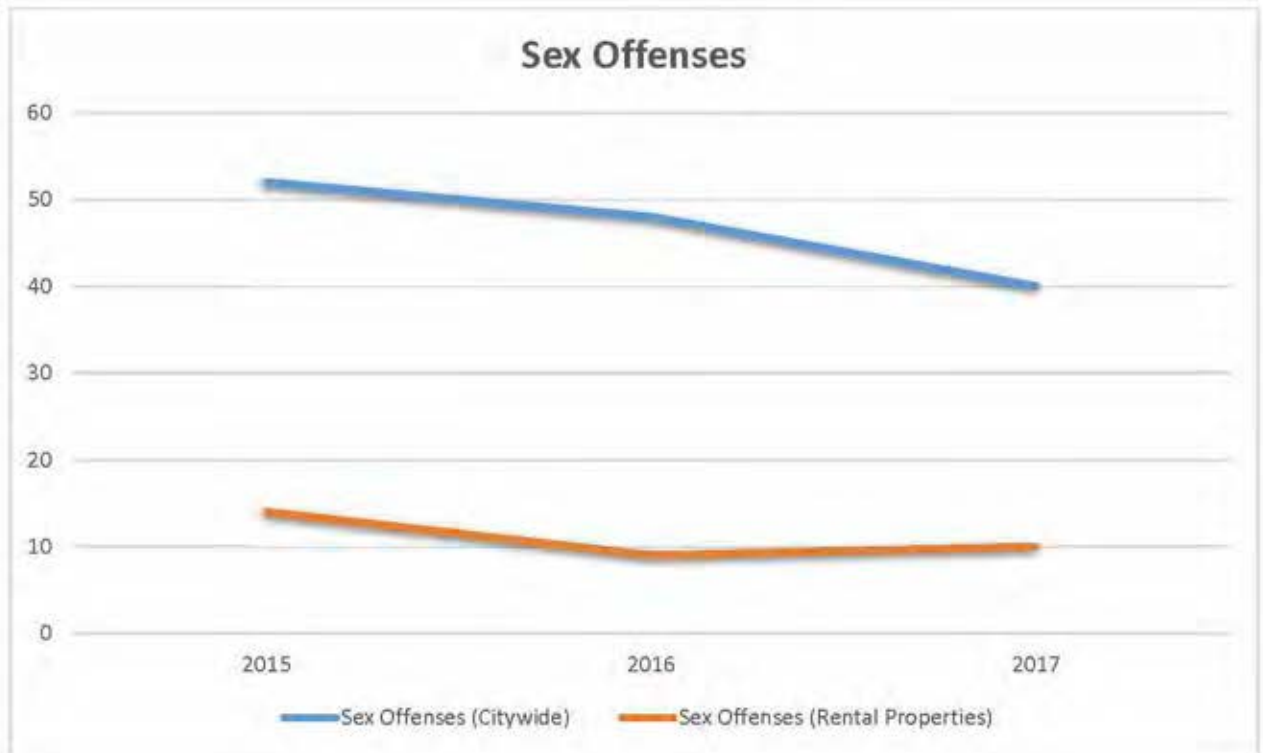
It is extremely encouraging—given vandalism’s important implications—that the Crime Free Rental Housing Program has led to a reduction of vandalism citywide and on rental properties specifically.

Other Crimes

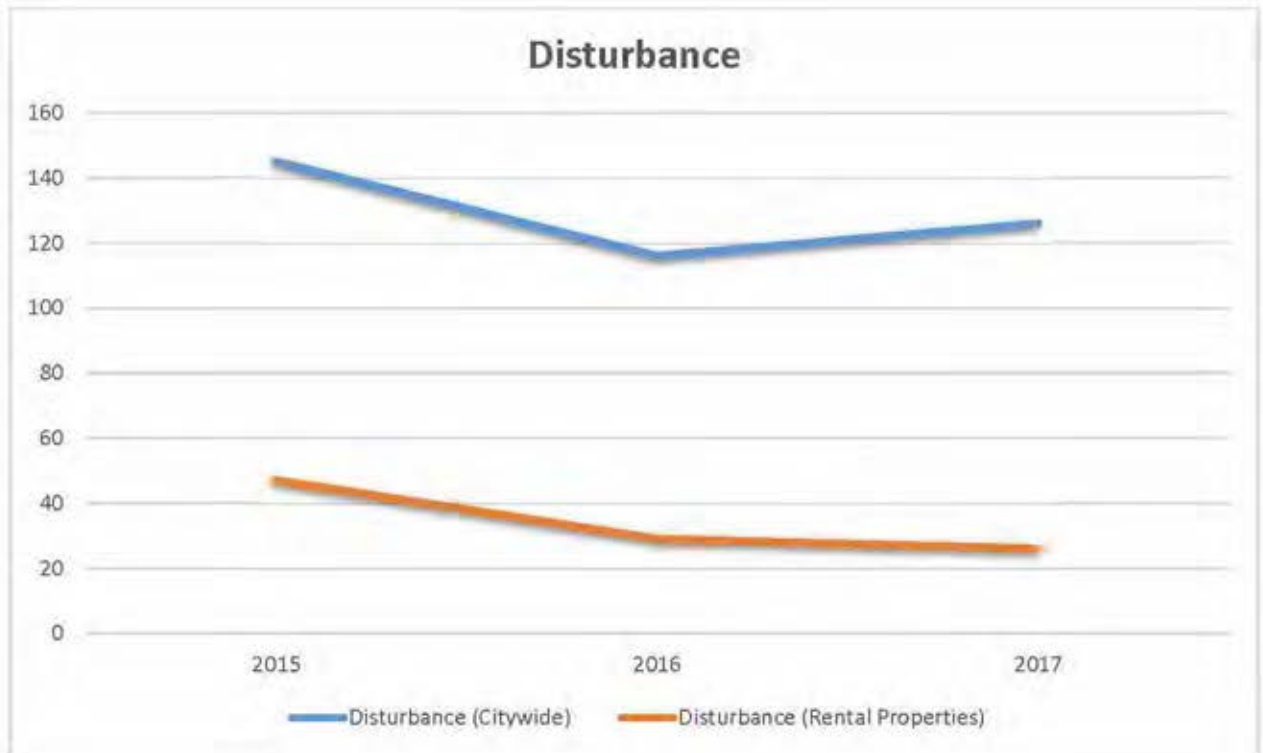
In addition to reducing the incidence of burglary and vandalism, the Crime Free Rental Housing Program has also led to reductions in theft, disturbances, and sex offenses. These statistics display that the Crime Free Rental Housing Program has not only effectively reduced property crimes, but also violent crimes which lead to serious injuries and are offensive to the dignity of our citizens.



<i>Crime Category</i>	2015	2016	2017
<i>Theft (Citywide)</i>	713	461	430
<i>Theft (Rental Properties)</i>	89	50	74



<i>Crime Category</i>	2015	2016	2017
<i>Sex Offenses (Citywide)</i>	52	48	40
<i>Sex Offenses (Rental Properties)</i>	14	9	10



<i>Crime Category</i>	2015	2016	2017
<i>Disturbance (Citywide)</i>	145	116	126
<i>Disturbance (Rental Properties)</i>	47	29	26

Controlled Substance Crimes and other Intangible benefits of the Crime Free Rental Housing Program:

While the previously discussed statistics reveal a correlation between the implementation of the Crime Free Rental Housing Program and the significant reduction of a number of important crimes, the statistics do not support a reduction in the number of controlled substance crimes within the City. This, however, is attributable to the City's role as one of the leading members of the Cannon River Drug and Violent Offender Task Force. The creation of the Drug Task Force coincided with a shift from what was primarily reactive policing, to proactive policing of drug crimes. The success of the Drug Task Force has been so great that it was recently named the Task Force of the Year by the Minnesota State

Association of Narcotics Investigators. As noted, proactive policing efforts can yield a statistical increase in crime, even though the negative effects of the crime are being reduced. This is supported by the experience of the officers on the ground.

The Police Department no longer responds to the same rental properties 50-100 times per year and problem tenants respond quickly to a concern that they could potentially be violating the crime free/drug free lease addendum they signed as responsible renters.

- **Results of the Rental Inspection and Licensing Program**

Since the initial implementation of the Rental Licensing Ordinance in 2015, 2,804 inspections have been completed, City staff identified 531 rental dwellings in violation of the Property Maintenance Code, and 100% of these violations have been corrected. In other words, the countless individuals and families living in these 531 rental dwellings now have a decent, safe, and sanitary home to live in, when they might not have before the adoption of the Rental Licensing Ordinance. While this alone justifies continuation of the Rental Licensing Program, a closer look at the numbers reveals that landlords and property managers are now taking their obligations to their tenants seriously and addressing issues before they ever result in a code violation.

Year	Schedule d Insp.	Complaint Insp.	Total Int. Insp.	Violations (Reinsp.)	Violation %
2015	512	35	547	109	19.93%
2016	344	37	381	139	36.48%
2017	468	33	501	132	26.35%
2018	345	40	385	72	18.70%
2019 (thru 9/25)	436	23	459	79	17.21%

From 2015-2017, City staff identified, on average over 126 rental dwellings with one or more code violations per year, and a total of 380 rental dwellings with one or more code violations during the same three-year period. During 2018 and 2019, however, City Staff identified, on average roughly 75 rental dwellings with one or more code violations per year, and a total of 151 rental dwellings with one or more code violations from the beginning of 2018 through September 25, 2019. This

represents a more than 40% decrease in the number of total code violations in rental dwellings.



There are still more than three months left in 2019, which could affect these numbers. It is important to note, however, in addition to a decrease in the total number of violations, the code violation rate has decreased as well.

Year	Total Int. Insp.	Violations (Reinsp.)	Violation %	Violation Rate (per 500 Insp.)¹
2015	547	109	19.93%	100
2016	381	139	36.48%	182
2017	501	132	26.35%	132
2018	385	72	18.70%	93
2019 (thru 9/25)	459	79	17.21%	86

¹ Rounded to the nearest whole number.



Although the remaining 2019 inspections may change the total number of code violations identified, the rate at which rental dwellings are found to be in violation of the code is not expected to increase. Rather staff anticipates the code violation rate will continue to decrease as the same rental dwellings are re-inspected during each two-year cycle (we are currently in the first year of the third inspection cycle).



As evidenced by the above, the Rental Licensing and Inspection program has been tremendously successful in encouraging maintenance of existing rental housing and correcting code violations that threaten the quality of life for citizens in our community. The provision of decent, safe, and sanitary housing is one of the City's essential objectives, as recognized in the Comprehensive Plan, and the Rental Licensing and Inspection Program has helped to realize this compelling objective for the betterment of the local tax base and, more importantly, the health, safety, and welfare of Faribault citizens.

While these statistics and figures are important in understanding how the Rental Licensing and Inspection program has helped remedy code violations, it is important not to lose sight of what these code violations represent. Every code violation represents a concrete threat to the safety of a citizen within our community. To emphasize this point, we have included the following real-life examples of violations that might not have been corrected had the City not adopted the Rental Licensing Ordinance.

General Disrepair



General disrepair issues negatively effect tenant quality of life and take a toll on the mental health of the residents who have to deal with them every day.

Aside from the stress and strain of living in an environment of general disrepair, the inability to effectively clean surfaces create health issues through the fostering of mold, mildew, and bacteria.



Insect and Rodent Infestations

Mice Though common, mice infestations can lead to serious health effects by contaminating food and other household



areas.

Cockroaches

Aside from being disgusting, cockroaches pose serious health risks.



Cockroaches live in sewer environments and come up into homes in search of food and warmth, leaving behind bacteria, parasites and pathogens, all of which can affect humans.



Bed Bugs

While bed bugs are not carriers of harmful diseases or parasites, they can have serious psychological effects. Additionally, their bites cause rashes, scars and lesions.



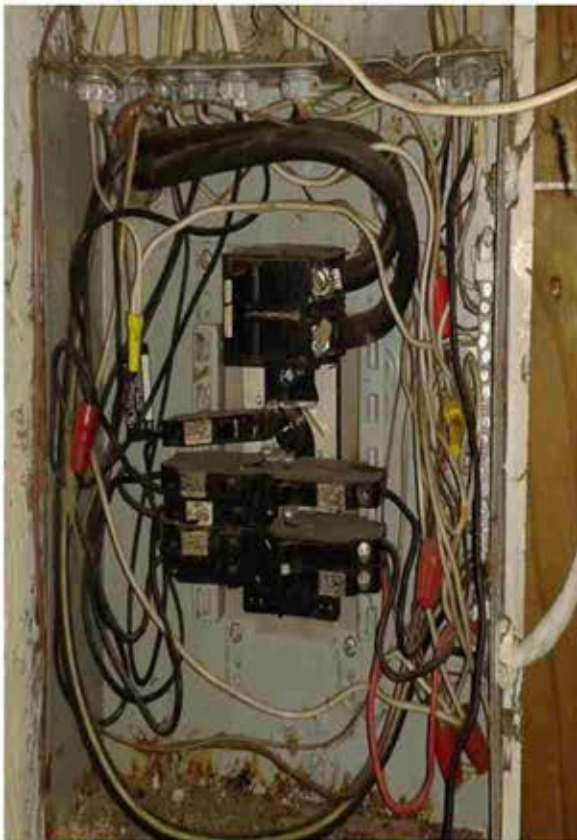
Operable Windows and Doors

As noted above, ensuring windows and doors are operable is a simple measure a landlord can take to ensure a rental dwelling is safe and secure from break-ins. Operable



windows and doors are not only effective at keeping people from getting in, they are also essential to allowing people out in case of emergencies.

Electrical Hazards



Exposed wires and uncovered electrical panels present a threat of electrocution to anyone who encounters them.



Just as dangerous is the threat that exposed electrical systems can cause a fire, harming everyone in the building.



Fire

In addition to being subjected to potential fire hazards, some tenants may not realize their homes are improperly equipped to respond to a fire. Without the rental inspection program, these issues may not have been realized until it was too late.



Water and Mold



Unaddressed water leaks present an obvious danger to a tenant's property.

More importantly, it creates an environment where mold can grow and flourish, which can significantly affect the health and welfare of tenants.



Plumbing and Waste Disposal



Inoperable plumbing systems and exposed waste lines can lead to significant health effects from methane exposure.



HVAC



The safe and efficient operation of HVAC equipment prevents carbon monoxide poisoning. Carbon monoxide, even in small quantities, can cause serious health problems, particularly in children and the elderly. Vent lines incapable of venting carbon monoxide creates extreme health issue. The residents of the dwelling where these photos were taken are lucky to be alive.



Recommended Changes to the Rental Licensing and Crime Free Ordinance

The Ordinance has been serving its stated purpose by both reducing criminal activity in the residential rental market, reducing service calls to problem properties, as well as providing the City with a mechanism to assure rental units are properly maintained and operated for the residential tenants.

Staff recommends the Council adopt Ordinance 2019-17, which clarifies the obligations and procedures of the current ordinance, while retaining all the aspects that led to the positive outcomes described in this report, as well as additional standards reflecting current best practice benchmarks and industry standards. The following summarizes the proposed changes:

Removal of Redundant and Unnecessary language

In 2014 the City adopted the 2006 Edition of the International Property Maintenance Code ("IPMC") in conjunction with the Rental Licensing Ordinance. The 2006 Edition of the IPMC met most of the City's needs; however, there was one section Staff found deficient. The Section governing occupancy limits contained ambiguous and arguably

unenforceable language, which read as follows: "The number of persons occupying a dwelling unit shall not create conditions that, in the opinion of the code official, endanger the life, health, safety or welfare of the occupants."

Prior to the 2006 Edition, the IPMC determined "overcrowding" (see discussion above) through the use of a square footage table, which was based upon reasonable and normal household conditions that account for live and dead loading. In most cases, the numbers in the table are very liberal but are effective at dealing with true overcrowded rooms and structures. The reason the language was stricken from the code was to allow for a couple and their small child(ren) to occupy a single room less than 150 square feet.

While the objective behind the change was justifiable, the method the International Code Council used to reach that end was not. Code officials need objective criteria in which to draw conclusions and make educated and calculated decisions. In staff's opinion the language of the 2006 IPMC afforded the code officials too much discretion. As such, staff recommended the City include a square footage calculation, which was even more liberal than the square footage table previously utilized by the IPMC, in the rental licensing ordinance. While the square footage calculation was preferable over the vague language used by the IPMC, questions were raised about how the square footage method would affect the City's resources. Specifically, requiring code officials to measure every sleeping room they inspected was thought to be an inefficient allocation of the City's limited code inspection resources. As such, staff recommended the City include in the Rental Licensing Ordinance clear and unambiguous language, which could also be easily and efficiently enforced. The standard staff recommended, and which the Council ultimately adopted, was an occupancy policy of two persons per bedroom, plus one ("2+1"). The 2+1 standard was based upon the guidance handed down by HUD, which found that "an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act." Consistent with the City's practice of establishing minimum standards that are more liberal than best practice guidelines, the City revised this occupancy standard to allow one additional occupant per sleeping room. This standard had the added benefit of allowing a couple and their child to occupy a single room. Nevertheless, this standard was viewed as too restrictive on a family's ability to occupy the same room as their small children. Thus, staff recommended, and

the Council agreed, an exception should be added to the Rental Licensing Ordinance that allowed the occupant load of a sleeping room to be increased by one for every child under the age of two.

The pending adoption of the 2018 IPMC renders much of the language in current § 7-40(h) nugatory, as the 2018 IPMC replaces the ambiguous language in the 2006 IPMC with clear enforceable language. In addition to the best practices benchmark established by the 2018 IPMC, the current proposed ordinance retains 2+1 in order to efficiently allocate the City's limited code inspection resources. A licensee who can meet either standard will be found to be compliant with the City Code. In other words, if a unit contains a sleeping room, which under the IPMC standard, is not large enough to accommodate three occupants, three occupants may still inhabit the room because they are entitled to no less than three occupants under the 2+1 standard. On the other hand, if a unit contains a sleeping room large enough to accommodate four or more occupants, the 2+1 standard will not prevent the increased occupant load if the room meets the requirements of the 2018 IPMC best practice benchmark. Lastly, the under two exception has been retained (and rephrased for added clarity) to continue to allow a family to occupy the same room as their small children.

Correction of Clerical Errors

Both previous iterations of the ordinance contained minor drafting errors that are now corrected in the new ordinance.

When the City adopted the 2006 Edition of the International Property Maintenance Code, the Faribault Uniform Housing Code was renamed the Faribault Property Maintenance Code. The language in the Rental Licensing Ordinance, however, still referred to the Property Maintenance Code as the Uniform Housing Code. This draft ordinance corrects that clerical error for additional clarity.

In 2017, the entire ordinance was revised and reorganized to improve the clarity of a landlord's obligations under the Ordinance as well as the City's rights and procedures for enforcing the Ordinance provisions. While the revisions improved the clarity of the Ordinance in general, Section 7-41 mistakenly contained two subdivisions labeled paragraph (c). This error has been corrected in the current draft ordinance.

Additional Changes to Improve Clarity

As in the 2017 revision, the proposed ordinance contains a number of revisions intended to clarify a landlord's obligations under the Ordinance as well as the City's enforcement procedures.

Rental Applicants with Criminal History

Since the initial adoption in 2014, each iteration of this Ordinance required landlords to conduct a criminal background check on all potential tenants. This requirement was never intended to prevent landlords from renting to applicants with a criminal history. Nor was it intended to prevent applicants with a criminal history from renting a residential dwelling within the City. Rather, the purpose of the criminal background check requirement is to promote active management and ensure landlords are making informed decisions regarding who they rent to. Landlords can be derelict in their duty to ensure their decisions advance the goal of resident and neighborhood safety. The Ordinance, by requiring criminal background checks, ensures willful ignorance is no longer an excuse.

A landlord who takes their obligation seriously will use this information to open a dialogue with the prospective tenant, gather additional relevant information, and take a more active role in the operation of their facilities. In this way they can ensure they are making thoughtful housing decisions, which do not threaten the health, safety, or welfare of other residents or neighbors, while at the same time making the City's goal of decent, safe, and sanitary housing a reality for all who live in the City. The criminal background check requirement does not preclude a landlord from renting to an individual with a criminal history, and merely allows the landlord to make an informed decision, including taking into consideration any positive lifestyle changes the individual may have made. This aspect of the Crime Free Rental Housing program is explicitly stated in the Ordinance to avoid any confusion.

In order to ensure landlords are complying with their obligations under the Fair Housing Act, the City has posted HUD's guidance document, entitled, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, dated April 4, 2016, on the City's website and has incorporated it into the training manual landlords receive after attending the crime free training session.

Tenant Victim

Since the initial Ordinance was implemented in 2015, the Police Department has made a conscious effort to protect tenants from experiencing any negative consequences under the ordinance as a result of crimes which they fell victim to. In most cases this involves making an explicit reference to the tenant who is responsible for the violation. The proposed Ordinance makes clear it is a landlord's obligation to pay attention to the determination of a tenant-victim and exempt the tenant-victim from any resulting enforcement action.

Appeal Timelines

The Crime Free Rental Housing program requires the Crime Free/Drug Free Lease addendum be included in all residential rental agreements in the City. While the Police Department can notify a landlord about circumstances violating the lease, the City is not a party to the agreement and cannot enforce the lease itself. Therefore, the landlord must also conclude the lease addendum has been violated before a tenant can be evicted. In the same vein, if the City notifies a landlord the lease addendum has been violated, and the tenant disagrees with that assessment, the tenant's first right of appeal is always to the landlord him/herself. If the landlord agrees with the tenant, the landlord can appeal the lease termination directive to the City Council. Staff is not aware of any situations in which the current appeal timelines in the ordinance have hindered this process. Nevertheless, the proposed ordinance adjusts the appeal timelines to better accommodate this process.

Tenant Remedies

In addition to appealing to the landlord him/herself, a tenant is not prohibited from exercising any other rights they may have under state and federal law, as well as the lease agreement itself. This fact is further clarified in the proposed Ordinance.

Attachments:

1. Brown, T., R. Baggott, K. Jones, and R. Hunt, *The Impact of Overcrowding on Health and Education: A Review of the Research Evidence and Literature*, London: The Office of the Deputy Prime Minister (2004).

2. Catalano, Shannan M., *Victimization during household burglary*, US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2010.
3. Chambers, Earle C., Damaris Fuster, Shakira F. Suglia, and Emily Rosenbaum, *Depressive symptomology and hostile affect among Latinos using housing rental assistance: the AHOME study*, Journal of Urban Health 92, no. 4 (2015): 611-621.
4. Chambers, Earle C., Damaris Fuster, Shakira F. Suglia, and Emily Rosenbaum, *The Link between Housing, Neighborhood, and Mental Health*, MacArthur Foundation Policy Research Brief.
5. Green, Richard K., and Michelle J. White, *Measuring the benefits of homeownership: Effects on children*, Journal of urban economics 41, no. 3 (1997): 441-461.
6. Kelling, George L., and William H. Sousa, *Do police matter? An analysis of the impact of New York City's police reforms*, CCI Center for Civic Innovation at the Manhattan Institute, 2001.
7. Regoeczi, Wendy C., *Crowding in context: An examination of the differential responses of men and women to high-density living environments*, Journal of Health and Social Behavior 49, no. 3 (2008): 254-268.
8. Solari, Claudia D., and Robert D. Mare, *Housing crowding effects on children's wellbeing*, Social science research 41, no. 2 (2012): 464-476.
9. Task Force on Sudden Infant Death Syndrome: *SIDS and other sleep-related infant deaths: Updated 2016 recommendations for a safe infant sleeping environment*, Pediatrics 138, no. 5 (2016): e20162938.
10. U.S. Dep't of Hous. and Urban Dev., *Healthy Home Rating System – Operating Guidance* (Jan. 2014).
11. U.S. Dep't of Hous. and Urban Dev., *Measuring Overcrowding in Housing* (September 2007).
12. U.S. Dep't of Hous. and Urban Dev., Office of General Counsel, *Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (Apr. 4, 2016).
13. U.S. Dep't of Hous. and Urban Dev., PIH 99-6 (TDHE), *Providing Assistance to Non Low-Income Indian families under the Native American Housing Assistance and Self-Determination Act of 1996* (Feb. 6, 1999).

14. U.S. Dep't of Hous. and Urban Dev., *Public Housing Occupancy Guidebook* (June 2003).

EXHIBIT L

THE IMPORTANCE OF SCREENING

With the cost of eviction rising to the point where it can be cheaper to "buy" someone out of a lease than to pursue eviction, it is more important than ever to do a thorough job of tenant screening.

SELECTION CRITERIA

It is important that you have written selection criteria to assure that you are treating all your applicants consistently.

Suggested criteria includes *denying* applicants who:

- ✓ Falsify their application
- ✓ Have a criminal history
- ./ Have a history of drug / alcohol use that results in behavior that would adversely affect the living environment of the building
- ./ Have a record of evictions
- ./ Are unable to have utilities connected in their name
- ./ Have not met their financial obligations – especially with regard to rent
- ./ Cannot provide 36 months of residential history

THE APPLICATION

The application is a starting point for gathering information about the applicant. Make sure that you get proper identification with which to verify the date of birth and the proper spelling of the applicant's name. Ask probing questions – *not just the basics*:

- ./ Do you expect any changes to your household composition?
- ./ Is there anyone currently living with you that is not on the application?
- ./ Do you have sole legal and physical custody of the children?
- ./ Have you ever been evicted or had an unlawful detainer filed against you?
- ./ Have you ever been convicted of a crime, including a felony, gross misdemeanor, or misdemeanor, anywhere in the United States?
- ./ Have you ever been admitted to a detoxification center?
- ./ Will you be parking a car in our parking lot?

THE INTERVIEW

One goal of the interview is to educate the applicant about your application and verification process. A good interviewer is able to gather more information from the applicant by reviewing the information provided on the application and asking open ended or probing questions of the applicant.

EXHIBIT M



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

April 4, 2016

**Office of General Counsel Guidance on
Application of Fair Housing Act Standards to the Use of Criminal Records by
Providers of Housing and Real Estate-Related Transactions**

I. Introduction

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin.¹ HUD's Office of General Counsel issues this guidance concerning how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions. Specifically, this guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual's criminal history.

II. Background

As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort.² The United States prison population of 2.2 million adults is by far the largest in the world.³ As of 2012, the United States accounted for only about five percent of the world's population, yet almost one quarter of the world's prisoners were held in American prisons.⁴ Since 2004, an average of over 650,000 individuals have been released annually from federal and state prisons,⁵ and over 95 percent of current inmates will be released at some point.⁶ When individuals are released from prisons and jails, their ability to access safe, secure and affordable housing is critical to their successful reentry to society.⁷ Yet many formerly incarcerated individuals, as well as individuals who were convicted but not incarcerated, encounter significant barriers to securing housing, including public and other federally-subsidized housing,

¹ 42 U.S.C. § 3601 *et seq.*

² Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems, 2012*, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

³ Nat'l Acad. Sci., Nat'l Res. Couns., *The Growth of Incarceration in the United States: Exploring Causes and Consequences 2* (Jeremy Travis, et al. eds., 2014), available at: <http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

⁴ *Id.*

⁵ E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at 29, appendix tbls. 1 and 2, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>.

⁶ Bureau of Justice Statistics, U.S. Dep't of Justice, *Reentry Trends in the United States*, available at <http://www.bjs.gov/content/pub/pdf/reentry.pdf>.

⁷ See, e.g., S. Metraux, et al. "Incarceration and Homelessness," in *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research*, #9 (D. Dennis, et al. eds., 2007), available at: <https://www.huduser.gov/portal/publications/pdf/p9.pdf> (explaining "how the increasing numbers of people leaving carceral institutions face an increased risk for homelessness and, conversely, how persons experiencing homelessness are vulnerable to incarceration.").

because of their criminal history. In some cases, even individuals who were arrested but not convicted face difficulty in securing housing based on their prior arrest.

Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.⁸ Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers. While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability).⁹ Additionally, intentional discrimination in violation of the Act occurs if a housing provider treats individuals with comparable criminal history differently because of their race, national origin or other protected characteristic (i.e., disparate treatment liability).

III. Discriminatory Effects Liability and Use of Criminal History to Make Housing Decisions

A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate.¹⁰ Under this standard, a facially-neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification. Thus, where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.¹¹ Discriminatory effects liability is assessed under a three-step burden-shifting standard requiring a fact-specific analysis.¹²

The following sections discuss the three steps used to analyze claims that a housing provider's use of criminal history to deny housing opportunities results in a discriminatory effect in violation of the Act. As explained in Section IV, below, a different analytical framework is used to evaluate claims of intentional discrimination.

⁸ See *infra* nn. 16-20 and accompanying text.

⁹ The Fair Housing Act prohibits discrimination based on race, color, religion, sex, disability, familial status, and national origin. This memorandum focuses on race and national origin discrimination, although criminal history policies may result in discrimination against other protected classes.

¹⁰ 24 C.F.R. § 100.500; accord *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, ___ U.S. ___, 135 S. Ct. 2507 (2015).

¹¹ 24 C.F.R. § 100.500; see also *Inclusive Cmty. Project*, 135 S. Ct. at 2514-15 (summarizing HUD's Discriminatory Effects Standard in 24 C.F.R. § 100.500); *id.* at 2523 (explaining that housing providers may maintain a policy that causes a disparate impact "if they can prove [the policy] is necessary to achieve a valid interest.").

¹² See 24 C.F.R. § 100.500.

A. Evaluating Whether the Criminal History Policy or Practice Has a Discriminatory Effect

In the first step of the analysis, a plaintiff (or HUD in an administrative adjudication) must prove that the criminal history policy has a discriminatory effect, that is, that the policy results in a disparate impact on a group of persons because of their race or national origin.¹³ This burden is satisfied by presenting evidence proving that the challenged practice actually or predictably results in a disparate impact.

Whether national or local statistical evidence should be used to evaluate a discriminatory effects claim at the first step of the analysis depends on the nature of the claim alleged and the facts of that case. While state or local statistics should be presented where available and appropriate based on a housing provider's market area or other facts particular to a given case, national statistics on racial and ethnic disparities in the criminal justice system may be used where, for example, state or local statistics are not readily available and there is no reason to believe they would differ markedly from the national statistics.¹⁴

National statistics provide grounds for HUD to investigate complaints challenging criminal history policies.¹⁵ Nationally, racial and ethnic minorities face disproportionately high rates of arrest and incarceration. For example, in 2013, African Americans were arrested at a rate more than double their proportion of the general population.¹⁶ Moreover, in 2014, African Americans comprised approximately 36 percent of the total prison population in the United States, but only about 12 percent of the country's total population.¹⁷ In other words, African Americans were incarcerated at a rate nearly three times their proportion of the general population. Hispanics were similarly incarcerated at a rate disproportionate to their share of the

¹³ 24 C.F.R. § 100.500(c)(1); *accord Inclusive Cmty's. Project*, 135 S. Ct. at 2522-23. A discriminatory effect can also be proven with evidence that the policy or practice creates, increases, reinforces, or perpetuates segregated housing patterns. See 24 C.F.R. § 100.500(a). This guidance addresses only the method for analyzing disparate impact claims, which in HUD's experience are more commonly asserted in this context.

¹⁴ *Compare Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) ("[R]eliance on general population demographic data was not misplaced where there was no reason to suppose that physical height and weight characteristics of Alabama men and women differ markedly from those of the national population.") with *Mountain Side Mobile Estates P'ship v. Sec'y of Hous. & Urban Dev.*, 56 F.3d 1243, 1253 (10th Cir. 1995) ("In some cases national statistics may be the appropriate comparable population. However, those cases are the rare exception and this case is not such an exception.") (citation omitted).

¹⁵ *Cf. El v. SEPTA*, 418 F. Supp. 2d 659, 668-69 (E.D. Pa. 2005) (finding that plaintiff proved prima facie case of disparate impact under Title VII based on national data from the U.S. Bureau of Justice Statistics and the Statistical Abstract of the U.S., which showed that non-Whites were substantially more likely than Whites to have a conviction), *aff'd on other grounds*, 479 F.2d 232 (3d Cir. 2007).

¹⁶ See FBI Criminal Justice Information Services Division, *Crime in the United States, 2013*, tbl.43A, available at <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-43> (Fall 2014) (reporting that African Americans comprised 28.3% of all arrestees in 2013); U.S. Census Bureau, Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2013 to December 1, 2013, available at <http://www.census.gov/popest/data/national/asrh/2014/2014-nat-res.html> (reporting data showing that individuals identifying as African American or Black alone made up only 12.4% of the total U.S. population at 2013 year-end).

¹⁷ See E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at tbl. 10, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>; and U.S. Census Bureau, Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2014 to December 1, 2014, available at <http://www.census.gov/popest/data/national/asrh/2014/2014-nat-res.html>.

general population, with Hispanic individuals comprising approximately 22 percent of the prison population, but only about 17 percent of the total U.S. population.¹⁸ In contrast, non-Hispanic Whites comprised approximately 62 percent of the total U.S. population but only about 34 percent of the prison population in 2014.¹⁹ Across all age groups, the imprisonment rates for African American males is almost six times greater than for White males, and for Hispanic males, it is over twice that for non-Hispanic White males.²⁰

Additional evidence, such as applicant data, tenant files, census demographic data and localized criminal justice data, may be relevant in determining whether local statistics are consistent with national statistics and whether there is reasonable cause to believe that the challenged policy or practice causes a disparate impact. Whether in the context of an investigation or administrative enforcement action by HUD or private litigation, a housing provider may offer evidence to refute the claim that its policy or practice causes a disparate impact on one or more protected classes.

Regardless of the data used, determining whether a policy or practice results in a disparate impact is ultimately a fact-specific and case-specific inquiry.

B. Evaluating Whether the Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest

In the second step of the discriminatory effects analysis, the burden shifts to the housing provider to prove that the challenged policy or practice is justified – that is, that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest of the provider.²¹ The interest proffered by the housing provider may not be hypothetical or speculative, meaning the housing provider must be able to provide evidence proving both that the housing provider has a substantial, legitimate, nondiscriminatory interest supporting the challenged policy and that the challenged policy actually achieves that interest.²²

Although the specific interest(s) that underlie a criminal history policy or practice will no doubt vary from case to case, some landlords and property managers have asserted the protection of other residents and their property as the reason for such policies or practices.²³ Ensuring

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at table 10, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>.

²¹ 24 C.F.R. § 100.500(c)(2); see also *Inclusive Cmty. Project*, 135 S. Ct. at 2523.

²² See 24 C.F.R. § 100.500(b)(2); see also 78 Fed. Reg. 11460, 11471 (Feb. 15, 2013).

²³ See, e.g., Answer to Amended Complaint at 58, *The Fortune Society, Inc. v. Sandcastle Towers Hsg. Dev. Fund Corp.*, No. 1:14-CV-6410 (E.D.N.Y. May 21, 2015), ECF No. 37 (“The use of criminal records searches as part of the overall tenant screening process used at Sand Castle serves valid business and security functions of protecting tenants and the property from former convicted criminals.”); *Evans v. UDR, Inc.*, 644 F.Supp.2d 675, 683 (E.D.N.C. 2009) (noting, based on affidavit of property owner, that “[t]he policy [against renting to individuals with criminal histories is] based primarily on the concern that individuals with criminal histories are more likely than others to commit crimes on the property than those without such backgrounds ... [and] is thus based [on] concerns for the safety of other residents of the apartment complex and their property.”); see also J. Helfgott, *Ex-Offender Needs Versus Community Opportunity in Seattle*, Washington, 61 Fed. Probation 12, 20 (1997) (finding in a survey of 196

resident safety and protecting property are often considered to be among the fundamental responsibilities of a housing provider, and courts may consider such interests to be both substantial and legitimate, assuming they are the actual reasons for the policy or practice.²⁴ A housing provider must, however, be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property. Bald assertions based on generalizations or stereotypes that any individual with an arrest or conviction record poses a greater risk than any individual without such a record are not sufficient to satisfy this burden.

1. Exclusions Because of Prior Arrest

A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.²⁵ As the Supreme Court has recognized, “[t]he mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense.”²⁶ Because arrest records do not constitute proof of past unlawful conduct and are often incomplete (*e.g.*, by failing to indicate whether the individual was prosecuted, convicted, or acquitted),²⁷ the fact of an arrest is not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual. For that reason, a housing provider who denies housing to persons on the basis of arrests not resulting in conviction cannot prove that the exclusion actually assists in protecting resident safety and/or property.

landlords in Seattle that of the 43% of landlords that said they were inclined to reject applicants with a criminal history, the primary reason for their inclination was protection and safety of community).

²⁴ As explained in HUD’s 2013 Discriminatory Effects Final Rule, a “substantial” interest is a core interest of the organization that has a direct relationship to the function of that organization. The requirement that an interest be “legitimate” means that a housing provider’s justification must be genuine and not false or fabricated. *See* 78 Fed. Reg. at 11470; *see also Charleston Hous. Auth. v. U.S. Dep’t of Agric.*, 419 F.3d 729, 742 (8th Cir. 2005) (recognizing that, “in the abstract, a reduction in the concentration of low income housing is a legitimate goal,” but concluding “that the Housing Authority had not shown a need for deconcentration in this instance, and in fact, had falsely represented the density [of low income housing] at the location in question in an attempt to do so”).

²⁵ HUD recently clarified that arrest records may not be the basis for denying admission, terminating assistance, or evicting tenants from public and other federally-assisted housing. *See* Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, HUD PIH Notice 2015-19, (November 2, 2015), available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>.

²⁶ *Schwartz v. Bd of Bar Examiners*, 353 U.S. 232, 241 (1957); *see also United States v. Berry*, 553 F.3d 273, 282 (3d Cir. 2009) (“[A] bare arrest record – without more – does not justify an assumption that a defendant has committed other crimes and it therefore cannot support increasing his/her sentence in the absence of adequate proof of criminal activity.”); *United States v. Zapete-Garcia*, 447 F.3d 57, 60 (1st Cir. 2006) (“[A] mere arrest, especially a lone arrest, is not evidence that the person arrested actually committed any criminal conduct.”).

²⁷ *See, e.g.*, U.S. Dep’t of Justice, *The Attorney General’s Report on Criminal History Background Checks* at 3, 17 (June 2006), available at http://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf (reporting that the FBI’s Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and “the most comprehensive single source of criminal history information in the United States,” is “still missing final disposition information for approximately 50 percent of its records”).

Analogously, in the employment context, the Equal Employment Opportunity Commission has explained that barring applicants from employment on the basis of arrests not resulting in conviction is not consistent with business necessity under Title VII because the fact of an arrest does not establish that criminal conduct occurred.²⁸

2. Exclusions Because of Prior Conviction

In most instances, a record of conviction (as opposed to an arrest) will serve as sufficient evidence to prove that an individual engaged in criminal conduct.²⁹ But housing providers that apply a policy or practice that excludes persons with prior convictions must still be able to prove that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. A housing provider that imposes a blanket prohibition on any person with any conviction record – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden. One federal court of appeals held that such a blanket ban violated Title VII, stating that it “could not conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed.”³⁰ Although the defendant-employer in that case had proffered a number of theft and safety-related justifications for the policy, the court rejected such justifications as “not empirically validated.”³¹

A housing provider with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary to serve a “substantial, legitimate, nondiscriminatory interest.” To do this, a housing provider must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.³²

²⁸ See U.S. Equal Emp’t Opportunity Comm’n, *EEOC Enforcement Guidance, Number 915.002*, 12 (Apr. 25, 2012), available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm; see also *Gregory v. Litton Systems, Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (holding that defendant employer’s policy of excluding from employment persons with arrests without convictions unlawfully discriminated against African American applicants in violation of Title VII because there “was no evidence to support a claim that persons who have suffered no criminal convictions but have been arrested on a number of occasions can be expected, when employed, to perform less efficiently or less honestly than other employees,” such that “information concerning a ... record of arrests without conviction, is irrelevant to [an applicant’s] suitability or qualification for employment”), *aff’d*, 472 F.2d 631 (9th Cir. 1972).

²⁹ There may, however, be evidence of an error in the record, an outdated record, or another reason for not relying on the evidence of a conviction. For example, a database may continue to report a conviction that was later expunged, or may continue to report as a felony an offense that was subsequently downgraded to a misdemeanor. See generally SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (2005), available at <http://www.search.org/files/pdf/RNTFCSCJRI.pdf>.

³⁰ *Green v. Missouri Pacific R.R.*, 523 F.2d 1290, 1298 (8th Cir. 1975).

³¹ *Id.*

³² *Cf. El*, 479 F.3d at 245-46 (stating that “Title VII ... require[s] that the [criminal conviction] policy under review accurately distinguish[es] between applicants that pose an unacceptable level or risk and those that do not”).

A policy or practice that fails to take into account the nature and severity of an individual's conviction is unlikely to satisfy this standard.³³ Similarly, a policy or practice that does not consider the amount of time that has passed since the criminal conduct occurred is unlikely to satisfy this standard, especially in light of criminological research showing that, over time, the likelihood that a person with a prior criminal record will engage in additional criminal conduct decreases until it approximates the likelihood that a person with no criminal history will commit an offense.³⁴

Accordingly, a policy or practice that fails to consider the nature, severity, and recency of criminal conduct is unlikely to be proven necessary to serve a "substantial, legitimate, nondiscriminatory interest" of the provider. The determination of whether any particular criminal history-based restriction on housing satisfies step two of the discriminatory effects standard must be made on a case-by-case basis.³⁵

C. Evaluating Whether There Is a Less Discriminatory Alternative

The third step of the discriminatory effects analysis is applicable only if a housing provider successfully proves that its criminal history policy or practice is necessary to achieve its substantial, legitimate, nondiscriminatory interest. In the third step, the burden shifts back to the plaintiff or HUD to prove that such interest could be served by another practice that has a less discriminatory effect.³⁶

Although the identification of a less discriminatory alternative will depend on the particulars of the criminal history policy or practice under challenge, individualized assessment of relevant mitigating information beyond that contained in an individual's criminal record is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account. Relevant individualized evidence might include: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts. By delaying consideration of criminal history until after an individual's financial and other qualifications are verified, a housing provider may be able to minimize any additional costs that such individualized assessment might add to the applicant screening process.

³³ Cf. *Green*, 523 F.2d at 1298 (holding that racially disproportionate denial of employment opportunities based on criminal conduct that "does not significantly bear upon the particular job requirements is an unnecessarily harsh and unjust burden" and violated Title VII).

³⁴ Cf. *El*, 479 F.3d at 247 (noting that plaintiff's Title VII disparate impact claim might have survived summary judgment had plaintiff presented evidence that "there is a time at which a former criminal is no longer any more likely to recidivate than the average person...."); see also *Green*, 523 F.2d at 1298 (permanent exclusion from employment based on any and all offenses violated Title VII); see Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 *Criminology and Pub. Pol'y* 483 (2006) (reporting that after six or seven years without reoffending, the risk of new offenses by persons with a prior criminal history begins to approximate the risk of new offenses among persons with no criminal record).

³⁵ The liability standards and principles discussed throughout this guidance would apply to HUD-assisted housing providers just as they would to any other housing provider covered by the Fair Housing Act. See HUD PIH Notice 2015-19 *supra* n. 25. Section 6 of that Notice addresses civil rights requirements.

³⁶ 24 C.F.R. § 100.500(c)(3); accord *Inclusive Cmty's. Project*, 135 S. Ct. 2507.

D. Statutory Exemption from Fair Housing Act Liability for Exclusion Because of Illegal Manufacture or Distribution of a Controlled Substance

Section 807(b)(4) of the Fair Housing Act provides that the Act does not prohibit “conduct against a person because such person has been convicted ... of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).”³⁷ Accordingly, a housing provider will not be liable under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.

Limitation. Section 807(b)(4) only applies to disparate impact claims based on the denial of housing due to the person’s *conviction* for drug manufacturing or distribution; it does not provide a defense to disparate impact claims alleging that a policy or practice denies housing because of the person’s *arrest* for such offenses. Similarly, the exemption is limited to disparate impact claims based on drug *manufacturing or distribution* convictions, and does not provide a defense to disparate impact claims based on other drug-related convictions, such as the denial of housing due to a person’s conviction for drug *possession*.

IV. Intentional Discrimination and Use of Criminal History

A housing provider may also violate the Fair Housing Act if the housing provider intentionally discriminates in using criminal history information. This occurs when the provider treats an applicant or renter differently because of race, national origin or another protected characteristic. In these cases, the housing provider’s use of criminal records or other criminal history information as a pretext for unequal treatment of individuals because of race, national origin or other protected characteristics is no different from the discriminatory application of any other rental or purchase criteria.

For example, intentional discrimination in violation of the Act may be proven based on evidence that a housing provider rejected an Hispanic applicant based on his criminal record, but admitted a non-Hispanic White applicant with a comparable criminal record. Similarly, if a housing provider has a policy of not renting to persons with certain convictions, but makes exceptions to it for Whites but not African Americans, intentional discrimination exists.³⁸ A disparate treatment violation may also be proven based on evidence that a leasing agent assisted a White applicant seeking to secure approval of his rental application despite his potentially disqualifying criminal record under the housing provider’s screening policy, but did not provide such assistance to an African American applicant.³⁹

³⁷ 42 U.S.C. § 3607(b)(4).

³⁸ *Cf. Sherman Ave. Tenants’ Assn. v. District of Columbia*, 444 F.3d 673, 683-84 (D.C. Cir. 2006) (upholding plaintiff’s disparate treatment claim based on evidence that defendant had not enforced its housing code as aggressively against comparable non-Hispanic neighborhoods as it did in plaintiff’s disproportionately Hispanic neighborhood).

³⁹ *See, e.g., Muriello*, 217 F. 3d at 522 (holding that Plaintiff’s allegations that his application for federal housing assistance and the alleged existence of a potentially disqualifying prior criminal record was handled differently than those of two similarly situated white applicants presented a prima facie case that he was discriminated against because of race, in violation of the Fair Housing Act).

Discrimination may also occur before an individual applies for housing. For example, intentional discrimination may be proven based on evidence that, when responding to inquiries from prospective applicants, a property manager told an African American individual that her criminal record would disqualify her from renting an apartment, but did not similarly discourage a White individual with a comparable criminal record from applying.

If overt, direct evidence of discrimination does not exist, the traditional burden-shifting method of establishing intentional discrimination applies to complaints alleging discriminatory intent in the use of criminal history information.⁴⁰ First, the evidence must establish a prima facie case of disparate treatment. This may be shown in a refusal to rent case, for example, by evidence that: (1) the plaintiff (or complainant in an administrative enforcement action) is a member of a protected class; (2) the plaintiff or complainant applied for a dwelling from the housing provider; (3) the housing provider rejected the plaintiff or complainant because of his or her criminal history; and (4) the housing provider offered housing to a similarly-situated applicant not of the plaintiff or complainant's protected class, but with a comparable criminal record. It is then the housing provider's burden to offer "evidence of a legitimate, nondiscriminatory reason for the adverse housing decision."⁴¹ A housing provider's nondiscriminatory reason for the challenged decision must be clear, reasonably specific, and supported by admissible evidence.⁴² Purely subjective or arbitrary reasons will not be sufficient to demonstrate a legitimate, nondiscriminatory basis for differential treatment.⁴³

While a criminal record can constitute a legitimate, nondiscriminatory reason for a refusal to rent or other adverse action by a housing provider, a plaintiff or HUD may still prevail by showing that the criminal record was not the true reason for the adverse housing decision, and was instead a mere pretext for unlawful discrimination. For example, the fact that a housing provider acted upon comparable criminal history information differently for one or more individuals of a different protected class than the plaintiff or complainant is strong evidence that a housing provider was not considering criminal history information uniformly or did not in fact have a criminal history policy. Or pretext may be shown where a housing provider did not actually know of an applicant's criminal record at the time of the alleged discrimination. Additionally, shifting or inconsistent explanations offered by a housing provider for the denial of an application may also provide evidence of pretext. Ultimately, the evidence that may be offered to show that the plaintiff or complainant's criminal history was merely a pretextual

⁴⁰ See, generally, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (articulating the concept of a "prima facie case" of intentional discrimination under Title VII); see, e.g., *Allen v. Muriello*, 217 F. 3d 517, 520-22 (7th Cir. 2000) (applying prima facie case analysis to claim under the Fair Housing Act alleging disparate treatment because of race in housing provider's use of criminal records to deny housing).

⁴¹ *Lindsay v. Yates*, 578 F.3d 407, 415 (6th Cir. 2009) (quotations and citations omitted).

⁴² See, e.g., *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1039-40 (2d Cir. 1979) ("A prima facie case having been established, a Fair Housing Act claim cannot be defeated by a defendant which relies on merely hypothetical reasons for the plaintiff's rejection.").

⁴³ See, e.g., *Muriello*, 217 F.3d at 522 (noting that housing provider's "rather dubious explanation for the differing treatment" of African American and White applicants' criminal records "puts the issue of pretext in the lap of a trier of fact"); *Soules v. U.S. Dep't of Hous. and Urban Dev.*, 967 F.2d 817, 822 (2d Cir. 1992) ("In examining the defendant's reason, we view skeptically subjective rationales concerning why he denied housing to members or protected groups [because] 'clever men may easily conceal their [discriminatory] motivations.'" (quoting *United States v. City of Black Jack, Missouri*, 508 F.2d 1179, 1185 (8th Cir. 1974))).

justification for intentional discrimination by the housing provider will depend on the facts of a particular case.

The section 807(b)(4) exemption discussed in Section III.D., above, does not apply to claims of intentional discrimination because by definition, the challenged conduct in intentional discrimination cases is taken because of race, national origin, or another protected characteristic, and not because of the drug conviction. For example, the section 807(b)(4) exemption would not provide a defense to a claim of intentional discrimination where the evidence shows that a housing provider rejects only African American applicants with convictions for distribution of a controlled substance, while admitting White applicants with such convictions.

V. Conclusion

The Fair Housing Act prohibits both intentional housing discrimination and housing practices that have an unjustified discriminatory effect because of race, national origin or other protected characteristics. Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics. While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification. Thus, a discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act.

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. Where a policy or practice excludes individuals with only certain types of convictions, a housing provider will still bear the burden of proving that any discriminatory effect caused by such policy or practice is justified. Such a determination must be made on a case-by-case basis.

Selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics violates the Act.

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