

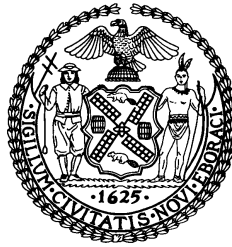
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THE COUNCIL OF THE CITY OF NEW YORK

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October 21, 2020

Oversight: Housing and Reentry

INT. NO. 1760: By Council Members Levine, Kallos, Torres, Rivera, Brannan, Cabrera, Rosenthal, Menchaca, Reynoso, Cornegy, Chin, Ampry-Samuel, Holden, Louis, Richards, Lander, Koo, Maisel, Rose, Constantinides, Ayala, Gibson, Grodenchik, Powers, Moya, Adams and Koslowitz

TITLE: A Local Law to amend the administrative code of the city of New York, in relation to tenant data privacy

ADMINISTRATIVE CODE: Adds a new article 21-A to title 27

I. INTRODUCTION

On October 21, 2020, the Committee on the Justice System, chaired by Council Member Rory Lancman, together with the Committee on Criminal Justice, chaired by Council Member Keith Powers, the Committee on Public Housing, chaired by Council Member Alicka Ampry-Samuel, the Committee on General Welfare, chaired by Council Member Stephen Levin, and the Committee on Housing and Buildings, chaired by Council Member Robert Cornegy, Jr., will hold an oversight hearing entitled “Oversight: Housing and Reentry”. The Committee on Housing and Buildings will also hear Introduction No. 1760, a local law to amend the administrative code of the city of New York, in relation to tenant privacy. The Committees expect to receive testimony from the Mayor’s Office of Criminal Justice (MOCJ), the New York Department of Housing Preservation and Development (HPD), the New York City Housing Authority (NYCHA), legal service providers, advocates, and other key stakeholders.

II. HOMELESSNESS AMONG FORMERLY INCARCERATED PEOPLE

A substantial portion of the single adult homeless population in the shelter system consists of individuals returning from institutional settings such as City jails and State prisons. According to the most recent Coalition for the Homeless annual report, approximately 30 percent of the

20,000 single adults moving into shelter every year come directly from institutional settings.¹ More than 3,400 people released from state prisons went directly into the shelter system in New York City in 2018, with 15,000 individuals sent to the shelter system in the City from the State between 2015 and 2018.² An additional 1,900 people who were receiving mental health treatment while incarcerated in City jails entered the shelter system during the same time frame.³

Like many of those experiencing homelessness in New York City, people returning from jails and state prisons are eligible for certain rental assistance programs, like the City Fighting Homelessness and Eviction Prevention Supplement (CityFHEPS). However, many advocates and homeless shelter providers argue limited funds available for assistance under the voucher program are often inadequate to secure apartments for the holders. In addition, source of income discrimination persists as a barrier to securing the few apartments that may be within reach to those with a voucher.⁴ Those returning from institutions face additional challenges that exacerbate the likelihood they become homeless, such as little guidance upon exiting from these settings on how to secure housing, difficulty in securing employment and steady income, and an inability to return to their families in the communities from which they came, among many others.

A. *Three-quarter Housing*

Three-quarter houses are typically one and two family homes, larger apartment buildings, or other structures run by operators who rent beds to single adults.⁵ These homes are referred to as

¹ Routhier, Giselle. “State of the Homeless 2020: Governor and Mayor to Blame as the City enters Fifth Decade of Homelessness Crisis,” Coalition for the Homeless. March 2020. Available at <https://www.coalitionforthehomeless.org/wp-content/uploads/2020/03/StateofTheHomeless2020.pdf>

² *Id*

³ *Id*

⁴ Cheney, Brendan. “Discrimination, Scarcity Still Barriers for Homeless Looking for Affordable Housing,” Politico NY, June 2018. Available at <https://www.politico.com/states/new-york/city-hall/story/2018/06/21/discrimination-scarcity-still-barriers-for-homeless-looking-for-housing-481096>

⁵ John Jay College of Criminal Justice, Prisoner Reentry Institute (PRI), Three Quarter Houses: The View from Inside (Oct. 2013) at v, available at <https://justiceandopportunity.org/wp-content/uploads/2016/04/PRI-TQH-Report.pdf> (hereinafter PRI Report).

“three-quarter housing” because they are seen as somewhere between halfway houses and private homes.⁶ Given that the New York City Building Code prohibits cohabitation by four or more unrelated persons,⁷ most, if not all, three-quarter houses are illegal.⁸ Single adults who are returning from prison or jail are regular tenants of three-quarter housing, with such housing being the only alternative to the shelter system or the street in many cases.⁹ According to a 2013 report by the Prisoner Reentry Institute at John Jay College (“PRI report”), 72% of three-quarter housing tenants who were surveyed were previously incarcerated.¹⁰

The living arrangements are often overcrowded¹¹ and three-quarter houses typically have multiple Building Code violations.¹² Three-quarter housing operators often violate tenants’ rights through unlawful evictions,¹³ with residents reporting that operators arbitrarily force people out without notice or court process.¹⁴ There are also reports of house operators exerting control and settling scores by contacting or threatening to contact parole or probation officers with often-fabricated allegations of misconduct.¹⁵

III. DEPARTMENT OF CORRECTION (DOC, the Department) DISCHARGE PLANNING EFFORTS

The most critical component of re-entry is discharge planning conducted while a person is in custody. Discharge planning consists broadly of a plan that ensures people in custody receive

⁶ Kim Barker, “A Choice for Recovering Addicts: Relapse or Homelessness,” THE NEW YORK TIMES (May 30, 2015) available at <http://www.nytimes.com/2015/05/31/nyregion/three-quarter-housing-a-choice-for-recovering-addicts-or-homelessness.html>.

⁷ NYC Bldg. Code 310.2.

⁸ PRI Report, *supra* note 5 at v.

⁹ *Id.* at 7.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 20.

¹² *Id.* At vi.

¹³ *See* Barker, *supra* note 6.

¹⁴ PRI Report *supra*, note 5 at vii.

¹⁵ *Id.* At viii.

the necessary re-entry services upon their release.¹⁶ Under Local Law 167 of 2017, DOC is required to provide discharge planning to some incarcerated people prior to their release from custody.¹⁷ Specifically, the law mandates the Department to develop and offer a discharge plan to incarcerated people who serve a sentence of thirty days or more.¹⁸ According to Mayor's Management Report (MMR), from July 1, 2019 to February 29, 2020, about twenty percent of the jail population voluntarily participated in skills building or discharge planning.¹⁹ Also, Administrative Code sections 9-127, 9-128, and 9-129 address issues related to discharge planning including information sharing, applying for government benefits, and access to birth certificates. Section 9-129 requires the Department to report annually on efforts made pursuant to these laws, as well as generally on discharge planning and recidivism.²⁰ The 2015 discharge planning report, which is the last report on discharge planning that the Department published on its website, purports that the Department developed a process with DHS that matches discharge files and shelter entrant data to compute the percentage of shelter entrants with DOC stays in the six months preceding shelter entry.²¹ However, the report provides no data on the number of individuals who meet these criteria. A Marshall Project article indicate that in 2017, based on MOCJ's analysis,

¹⁶ Local Law 167-2017, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3346814&GUID=9D8708D1-E852-4BF2-B462-16B40DCA3C1C&Options=ID|Text|&Search=>

¹⁷ Id.

¹⁸ Id.

¹⁹ Fiscal Year 2020 Mayor's Management Report, p. 75, available <https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/doc.pdf>

²⁰ Admin. Code 9-127, 9-128, 9-129, available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny)

²¹ New York City Department of Correction, Implementation of Administrative Code Discharge Planning Provision Report (December 2015), available at https://www1.nyc.gov/assets/doc/downloads/pdf/Implementation_Administrative_Code_September%202015.pdf

about 1,500 people had contact with jail and the shelter system five times over the preceding four years.²²

Section 9-127 also mandates DOC to collect information from persons sentenced to incarceration in city jails related to their housing, employment, and sobriety needs and, with the consent of the individuals, share that information with social service providers contracted with the Department to provide discharge planning services.²³ The Department currently contracts with nearly a dozen service providers, including Fortune Society and Osborne Association, through its Individualized Corrections Achievement Network (I-CAN) program to provide discharge planning services.²⁴ The MMR purports that over 3,000 people in custody enrolled in the I-CAN program between July 1, 2019 and February 29, 2020.²⁵

In 2019, the Administration released a “concept paper” to reorganize how discharge planning is contracted for by city agencies.²⁶ This paper noted that “the existing service delivery model has, therefore, caused DOC, MOCJ, and partnering providers to recognize missed opportunities to effectively continue care” and stated that the Administration would release separate Requests for Proposal (RFP) from the DOC and MOCJ to reorganize how reentry services, including discharge planning, were contracted and delivered. The administration’s stated goal was to make discharge planning as close to universal as possible.²⁷ MOCJ and DOC issued these two new RFPs for reentry and discharge planning services in October 2019. These RFPs

²² Christie Thompson, A Fresh Take on Ending the Jail-to-Street-to-Jail Cycle (May 10, 2017), The Marshall Project, available at <https://www.themarshallproject.org/2017/05/10/a-fresh-take-on-ending-the-jail-to-street-to-jail-cycle>

²³ Supra note 21.

²⁴ Information provided by the Administration to the Council

²⁵ Supra note 19, p. 75.

²⁶ Concept Paper for Reorganization of In-Custody and Reentry Contracting, available at <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/05/Concept-Paper-for-Reorganization-of-DOC-and-MOCJ-Reentry-contracts.pdf>

²⁷ Information provided to committee staff.

sought to better establish a continuum of care for enrollees in-custody and upon release by splitting procurement between DOC and MOCJ, expanding coverage to underserved incarcerated populations, and expanding the array of services available after release. DOC's RFP focuses on in-custody programming and expanding services to specific and more vulnerable populations including but not limited to LGBTQ individuals, female individuals, those with serious mental illnesses, and people with substance use disorders. MOCJ's RFP focuses on reentry and post-release programming. Specifically, MOCJ's RFP seeks to include more therapeutic services and supportive social services in their reentry programming.

To facilitate MOCJ's expanded services, \$10.5 million was transferred from DOC to MOCJ in the November 2019 Financial Plan. The previous discharge planning contracts ended on June 30, 2020. Both new RFPs will have a contract period of July 1, 2020 to June 30, 2023 with a renewal option for three years. The anticipated cost of the combined RFPs is a total of \$44.4 million, with a tentative start of services to begin at the start of Fiscal 2021. As of the Fiscal 2021 Executive Plan, the RFP was in the evaluation phase, but because of the City's shift to responding to COVID-19, the evaluation committee was focused on the public health crisis and the evaluation was suspended. Since the Fiscal 2021 Adopted Budget, committee staff have not received budget responses from MOCJ, and it is unclear at the time of the writing of this report the current status of the RFP. Though some information indicated that the Administration intended to begin this new structure in July of 2020,²⁸ it is not clear how the transition to this structure has been implemented as of October 2020.²⁹

²⁸ Report of the New York City Council's Finance Division on the Fiscal 2021 Preliminary Plan and the Fiscal 2020 Preliminary Mayor's Management Report for the Mayor's Office of Criminal Justice, March 19, 2020, available at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/03/098-MOCJ.pdf>

²⁹ No requests for proposal appear on MOCJ's website.

The Department is also mandated under section 9-128 to make available and accessible to incarcerated people applications for government benefits and provide them with assistance with completing the applications and obtaining a copy of their birth certificate prior to release provided that they were born in New York City.³⁰ The 2015 discharge planning report states that DOC uses benefit boards, also known as Resource Centers, to make applications for government benefits provided by HRA and other local, state, and federal agencies accessible to people in custody.³¹ There are a total of 22 Resource Centers located throughout the facilities in areas that are purportedly accessible to persons in custody, including law libraries and discharge planning areas.³² The report also states that the Department maintains a Support Center, one in Rose M Singer Center and the other in Eric M. Taylor Center, a facility that has since closed, to assist incarcerated persons who are eligible for government benefits programs with (re)enrollment, and reentry providers are reimbursed through the I-CAN for assisting people in custody at moderate to high risk of recidivism with application for government benefits and identifications.³³

As a result of COVID-19, DOC has suspended in-person discharge planning and I-CAN programs.³⁴ The Department has adopted remote alternatives to continue to provide these essential services.³⁵ The MMR states that the Department established a discharge planning hotline to connect individuals in custody with reentry providers to allow them to access needed services such as housing, treatment, and other essential services prior to their release from jail.³⁶ However, it is not clear from the MMR whether individuals in custody who are not I-CAN participants are receiving remote assistance with enrollment in government benefits programs and how many

³⁰ Supra note 21.

³¹ Supra note 23.

³² Id.

³³ Id.

³⁴ Supra note 19, p. 76.

³⁵ Id.

³⁶ Id.

people are receiving this assistance. The report does make clear that the Department's ability to provide these services has been challenging given the increase number of releases due to COVID-19.³⁷ In fact, service providers have charged that people in custody are being released from correction facilities without their personal belongings, including identifications (IDs).³⁸ For people in custody, having accessing to an ID card is essential for accessing housing and public benefits upon their release.³⁹

IV. MOCJ'S EFFORTS TO ADDRESS HOUSING REENTRY

A. Behavioral Health Task Force Recommendations for Supportive Housing

In June of 2014, Mayor de Blasio launched the Behavioral Health Task Force in an effort to address how the justice and health systems can work simultaneously to ensure that resources, treatment and other proven effective remedies are distributed appropriately to interrupt those needlessly cycling through the system. Under the leadership of Deputy Mayor of Health and Human Services Lilliam Barrios-Paoli and Director of the Mayor's Office of Criminal Justice Elizabeth Glazer, the Task Force's executive committee included commissioners from City and State agencies, experts from the private sector, representatives from law enforcement and behavioral health agencies, District Attorneys, defenders, judges and other court representatives, academics and service providers.⁴⁰

Since the release of the task force recommendations, the Mayor has expanded pre-trial diversion for people with behavioral health needs and opened intensive therapeutic housing units in City jails for people with serious mental health disorders, known as Clinical Alternatives to

³⁷ Supra note 20, p. 76.

³⁸ Divya Karthikeyan, De Blasio Administration Fails to Provide Proper Re-entry Services for Those Leaving Jail Amid Pandemic, Providers Say (October 2, 2020), Gotham Gazette, available

³⁹ Id.

⁴⁰ Mayor's Task Force on Behavioral Health and the Criminal Justice System Action Plan 2014, available at <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/04/annual-report-complete.pdf>

Punitive Segregation (CAPS) and Program to Accelerate Clinical Effectiveness (PACE).⁴¹ A top priority and key recommendation from the Task Force was to create a scattered-site supportive housing program focused on homeless individuals with behavioral health needs who have histories of cycling through the criminal justice system.⁴² As a result, DOHMH started the Justice Involved Supportive Housing program (JISH) with 120 beds of scattered site housing.⁴³

B. Justice Involved Supportive Housing program

In March 2017, DOHMH announced that 97 individuals in New York City who most frequently cycled through jail on low-level charges, stayed in City shelters, and struggled with behavioral health needs had been connected to permanent supportive housing through JISH.⁴⁴ The JISH program targets individuals who tend to face low-level charges, cycle through jail repeatedly for short periods of time, have significant behavioral health needs, struggle with homelessness, and tend to be older than the average jail population.⁴⁵ The model follows evidence-based practices that support that individuals cycling through the justice system, amongst others, were found to have fewer returns to jail, less shelter use, and improved health outcomes.⁴⁶ As of 2019, 120 JISH beds are provided between a combination of Fortune Society, Church Avenue Merchant Block Association (CAMBA) and Urban Pathways.⁴⁷ Participants receive targeted social services such as financial management resources, public benefits, substance use counseling and treatment, and medication management.⁴⁸

⁴¹ <https://criminaljustice.cityofnewyork.us/programs/reduce-number-of-behavioral-health-in-jail/>

⁴² NYC Department of Health and Mental Hygiene, Request for Proposal, JISH, (December 2019), available at <http://sachspolicy.com/wp-content/uploads/2020/01/Justice-Involved-Supportive-Housing-RFP.pdf>

⁴³ *Id.*

⁴⁴ Mayor's Office of Criminal Justice, Press release , (March 2017), available at

<https://www1.nyc.gov/site/doh/about/press/pr2017/justice-involved-supportive-housing.page>

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ NYC Council, Our Homelessness Crisis: A Case for Change, (January 2020), available at

<http://council.nyc.gov/data/wp-content/uploads/sites/73/2020/01/FINAL-PAPER.pdf>

⁴⁸ *Id.*

In June 2019, the de Blasio Administration released a concept paper for 150 additional JISH units⁴⁹ and in October 2019, as a part of the Borough Based Jails Points of Agreement (POA), the City committed to bringing the total number of JISH beds to 500 with a total investment of \$11.2 million by 2026. At the time of the writing of this report, it is unclear what the status of this POA item is, or how COVID-19 has delayed this and other POA investments.⁵⁰ On December 26, 2019, DOHMH released a Request for Proposals (RFP) for a JISH expansion. DOHMH anticipates awarding over \$93 million in funding to eligible applicants to create 380 new JISH housing units through this RFP.⁵¹ The current number of active new JISH beds or units is unknown.

C. MOCJ Emergency Hotels

Since the onset of COVID-19, and the City's efforts to release individuals from custody, emergency hotels managed by the Office of Emergency Management (OEM) were designated for people exiting City and State jails. The hotel contracts are held through OEM, and re-entry service providers that MOCJ contracts with continue to reach individuals and provide services at these sites. Individuals who tested positive for COVID-19 were released to designated isolation hotels that are not for a specific criminal justice involved population. Hotels for individuals that were asymptomatic or had not identified as COVID positive were designated to separate hotels dedicated to this purpose, with no detention security.

Since mid-March of 2020, Exodus Transitional Community, Inc (Exodus) began providing services from three hotels for individuals released from city and state detention facilities who

⁴⁹ NYC Dept. of Health and Mental Hygiene, Concept Paper, Congregate and Scattered Site Justice Involved Supportive Housing, (June 2019), available at <https://www1.nyc.gov/assets/doh/downloads/pdf/acco/2019/justice-involving-supported-housing-concept-paper.pdf>.

⁵⁰ NYC Council, Our Homelessness Crisis: A Case for Change, (January 2020), available at <http://council.nyc.gov/data/wp-content/uploads/sites/73/2020/01/FINAL-PAPER.pdf>

⁵¹ NYC Department of Health and Mental Hygiene, Request for Proposal, JISH, (December 2019), available at <http://sachspolicy.com/wp-content/uploads/2020/01/Justice-Involved-Supportive-Housing-RFP.pdf>

would otherwise be homeless.⁵² The hotels sites included the Wyndam Garden in Fresh Meadows, the Holiday Inn Express in Corona, and the Hotel Wolcott in Midtown Manhattan.⁵³ In addition to food and shelter, Exodus provided face masks, hygiene materials, cell phones, assistance in enrolling in government aid programs, and referrals for mental health and substance abuse treatment.

Through the end of August, 430 people were released from jails and prisons to hotel sites where Exodus provided services.⁵⁴ Just under half were subsequently reconnected with family, and almost a quarter were “successfully linked to Mental Health and/or Substance Use Treatment in the community.” In addition, 18% of participants successfully completed Exodus’ job training program, 13% of participants obtained transitional or permanent stable housing, and about 5% were placed into a job.⁵⁵

It is unclear at the time of the writing of this report what the total value of these specific contracts is. At least 209 rooms for the program were booked through Crewfacilities.com LLC, a Texas-based company that has charged the city \$15.5 million for booking emergency hotel rooms.⁵⁶ Those fees included a \$27 booking fee, per night, and \$18 for each breakfast provided.⁵⁷

V. HPD’S HOUSING PROGRAM FOR FORMERLY INCARERATED PEOPLE

⁵² “Queens lawmaker denounce city’s removal of former Rikers Island inmates to Fresh Meadows hotel” Carlotta Mohamed, Qns. com, June 25, 2020, available at: <https://qns.com/2020/06/queens-lawmakers-denounce-citys-removal-of-former-rikers-island-inmates-to-fresh-meadows-hotel/>

⁵³ “I feel human again’ – at three hotels, formerly incarcerated New Yorkers get the support they need,” Ilyssa Daly, Queens Daily Eagle, October 12, 2020, available at: <https://queenseagle.com/all/i-feel-human-again-at-three-nyc-hotels-formerly-incarcerated-get-help-with-reentry>

⁵⁴ “Exodus COVID19 Emergency Hotel Services & Response” shared with committee staff.

⁵⁵ *Id.*

⁵⁶ “Texas Firm Reaps Millions Booking COVID Hotel Rooms for NYC” Greg B. Smith, The City, May 25, 2020 available at: <https://www.thecity.nyc/coronavirus/2020/5/25/21270824/texas-firm-reaps-millions-booking-covid-hotel-rooms-for-nyc>

⁵⁷ *Id.*

As the administering agency for programs related to creating and maintaining affordable housing in the City, HPD plays a significant role in providing accessible, stable housing for formerly incarcerated individuals. Many people apply for affordable housing lotteries through the HPD-administered Housing Connect website.⁵⁸ However, securing a unit through an affordable housing lottery can be unpredictable. Further, landlords may conduct criminal background checks,⁵⁹ which could disqualify formerly incarcerated individuals from accessing certain housing opportunities. For these reasons, seeking affordable housing through other programs, such as supportive housing and certain rental subsidy programs, may be more viable for individuals recently released from jails or prisons. However, access to such housing may be impeded by eligibility requirements and other agency policies.

A. Supportive Housing

Supportive housing is affordable, rent-stabilized housing owned and operated by community organizations that also provide on-site support services.⁶⁰ The support services are intended to provide a “platform for health and recovery” for certain individuals, including those emerging from a period of incarceration.⁶¹ Such services include, among other things, case management, educational services, counseling, and referrals to medical services.⁶²

⁵⁸ NYC Housing Connect, available at <https://housingconnect.nyc.gov/PublicWeb/> (last accessed October 7, 2020).

⁵⁹ Fair Housing NYC, *Tenant Selection*, available at <https://www1.nyc.gov/site/fairhousing/rights-responsibilities/tenant-selection.page> (last accessed October 8, 2020).

⁶⁰ NYC Department of Housing Preservation and Development, *Supportive Housing Programs*, available at <https://www1.nyc.gov/site/hpd/services-and-information/supportive-housing.page> (last accessed October 7, 2020).

⁶¹ NYC Department of Health and Mental Hygiene, *Housing Services (Supportive Housing)*, available at <https://www1.nyc.gov/site/doh/health/health-topics/housing-services-supportive-housing.page> (last accessed October 7, 2020).

⁶² *Id.*

In November 2015, Mayor de Blasio announced “NYC 15/15,” an initiative to develop 15,000 units of supportive housing by 2030.⁶³ As of December 2019, the City had financed the preservation and creation of 6,225 supportive housing units through this program, including the construction of 4,650 units and the preservation of 1,575 units.⁶⁴ On average, the program has yielded 1,050 supportive housing units per year,⁶⁵ but whether that rate of construction and preservation will continue is unknown.

Eligibility requirements for these supportive housing units may also be somewhat limiting for many formerly incarcerated individuals. Specifically, it seems that to qualify for placement in one of the NYC 15/15 supportive housing units, single adults must generally be homeless or at high risk of homelessness and living with certain specified conditions (e.g. substance abuse disorder, HIV/AIDS, a disabling medical condition).⁶⁶ While these requirements may apply to some formerly incarcerated individuals, there may be many who could benefit from supportive housing but are not eligible.

B. Rental Subsidies

HPD also administers a number of rental subsidy programs that could help formerly incarcerated individuals to secure stable housing. The largest rental subsidy program administered by HPD is the Section 8 Housing Choice Voucher Program, which “provides federal funding for subsidies that help eligible low-income families rent decent, safe, and affordable housing in a

⁶³ Office of the Mayor, *De Blasio Administration Announces Plan to Create 15,000 Units of Supportive Housing* (November, 18, 2015), available at <https://www1.nyc.gov/office-of-the-mayor/news/852-15/de-blasio-administration-plan-create-15-000-units-supportive-housing#/0> (last accessed October 7, 2020).

⁶⁴ On file with the City Council’s Finance Division

⁶⁵ *Id.*

⁶⁶ Office of the Mayor, *De Blasio Administration Announces Plan to Create 15,000 Units of Supportive Housing* (November, 18, 2015), available at <https://www1.nyc.gov/office-of-the-mayor/news/852-15/de-blasio-administration-plan-create-15-000-units-supportive-housing#/0> (last accessed October 7, 2020).

neighborhood of their choice.”⁶⁷ While this program may be a good option for some formerly incarcerated individuals and their families, HPD has noted that an applicant’s criminal history may conflict with additional eligibility requirements, such as federal regulations or determinations by private landlords, and lead to a decrease in, or denial of, assistance.⁶⁸

Additional rental subsidy programs administered by HPD include the Continuum of Care Shelter Plus Care program and the Continuum of Care Moderate Rehabilitation Single Room Occupancy program. Both federally funded, these programs provide project-based rental assistance and supportive services for homeless individuals and families.⁶⁹ While eligibility requirements vary and generally require that applicants are homeless or chronically homeless, HPD has asserted that the agency will not deny applicants on the basis of, among other things, a prior arrest or conviction record.⁷⁰ However, federal eligibility requirements and determinations by private landlords may still prevent some formerly incarcerated individuals from securing housing through these programs.

VI. NYCHA’S EXCLUSIONARY POLICY AND FAMILY REUNIFICATION PROGRAM

⁶⁷ NYC Department of Housing Preservation and Development, *About Section 8*, available at <https://www1.nyc.gov/site/hpd/services-and-information/about-section-8.page>.

⁶⁸ NYC Department of Housing Preservation and Development, *Section 8: Housing Choice Voucher Program*, at p. 10, available at <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/hcv-faq.pdf> (last accessed October 8, 2020).

⁶⁹ NYC Department of Housing Preservation and Development, *Other Rental Subsidy Programs*, available at <https://www1.nyc.gov/site/hpd/services-and-information/other-rental-subsidy-programs.page> (last accessed October 8, 2020).

⁷⁰ NYC Department of Housing Preservation and Development, *HPD’s Continuum of Care-Shelter Plus Care Participant Program Information*, available at <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/coc-spc-briefing-english.pdf> (last accessed October 8, 2020); NYC Department of Housing Preservation and Development, *HPD’s Continuum of Care Moderate Single-Room Occupancy (Mod SRO)*, available at <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/coc-mod-sro-briefing.pdf> (last accessed October 8, 2020).

The New York City Housing Authority (“NYCHA”) is a “public benefit corporation,”⁷¹ a “public housing agency” (“PHA”) under the United States Housing Act of 1937,⁷² an “authority” under the New York State Public Housing Law,⁷³ and, for certain purposes, a City agency.⁷⁴ In addition to applicable federal and state law, NYCHA must abide by the City’s laws and rules related to planning, zoning, sanitation, building, and housing maintenance standards.⁷⁵

A. HUD Regulations

NYCHA’s policy on the admission, eviction and exclusion of individuals with a criminal record is governed by U.S. Department of Housing and Urban Development (“HUD”) regulations, which give NYCHA broad discretion to consider the criminal histories of tenants. HUD regulations state that, in selecting families for admission to public housing, PHAs are “responsible for screening family behavior and suitability for tenancy.”⁷⁶ PHAs are permitted to consider “all relevant information,” which may include, in relevant part, “[a] history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants.”⁷⁷

HUD requires the *permanent* denial of admission in the following limited circumstances:

- *Persons convicted of methamphetamine production.* PHAs are required to deny admission if any household member has been convicted of drug-related criminal activity for the manufacture of production of methamphetamine on the premises of federally-assisted housing.⁷⁸

⁷¹ Public Housing Law § 3.

⁷² See 42 USC § 1437a(b)(6); Public Housing Law §§ 3, 220, 400 and 401.

⁷³ See Public Housing Law §§ 3 and 56.

⁷⁴ *Bass v. New York*, 38 AD2d 407, 410 (2d Dept 1972).

⁷⁵ See 24 CFR §§ 5.703(g) and 902.20(e); Public Housing Law § 155.

⁷⁶ 24 C.F.R. § 960.203.

⁷⁷ *Id.*

⁷⁸ 24 C.F.R. § 960.204(a)(3).

Additionally, HUD requires PHAs to establish standards that prohibit admission in the following circumstances:

- *Persons evicted for drug-related criminal activity.* PHAs are required to prohibit admission of an applicant with a household member who has been evicted from federally-assisted housing for drug-related criminal activity for 3 years from the date of the eviction. However, the PHA may admit the household if the PHA determines that the evicted household member has successfully completed a supervised drug rehabilitation program or the circumstances leading up to the eviction no longer exist (e.g., the household member has died or is imprisoned).⁷⁹
- *Persons engaging in illegal use of a drug.* PHAs are required to deny admission of a household if the PHA determines that any household member is currently engaging in illegal use of a drug or the PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of use may threaten the health, safety or right to peaceful enjoyment of the premises by other residents.⁸⁰
- *Persons subject to the sex offender registration requirement.* PHAs are required to deny admission if any household member is subject to a lifetime registration requirement under a State sex offender registration program.⁸¹
- *Persons that abuse or show a pattern of abuse of alcohol.* PHAs must deny admission if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.⁸²

HUD permits PHAs to require an applicant or existing tenant to “exclude” a household member in order to be admitted or continue to reside in a HUD-assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants denial or termination.⁸³

Before the PHA denies admission based on criminal activity, the PHA is required to notify the household of the proposed action and provide a copy of the criminal record to the applicant and an opportunity to dispute the accuracy and relevance of the record.⁸⁴ HUD requires PHAs to

⁷⁹ *Id.* at § 960.204(a)(1).

⁸⁰ *Id.* § 960.204(a)(2).

⁸¹ *Id.* at § 960.204(a)(4).

⁸² *Id.* § 960.204(b).

⁸³ 24 C.F.R. § 5.852; *see also* 24 C.F.R. § 960.203(c)(3)(i).

⁸⁴ 24 C.F.R. § 960.204.

consider the time, nature and extent of the applicant's conduct, including the seriousness of the offense, evidence of rehabilitation, or evidence of the applicant family's participation in or willingness to participate in social service or counseling programs.⁸⁵

B. NYCHA's Policies

NYCHA's Tenant Selection and Assignment Plan ("TSAP") details NYCHA's process for admitting tenants. The TSAP mirrors HUD regulations on screening for suitability, allowing NYCHA to consider in relevant part, an applicant's "history of criminal activity involving crimes of physical violence to persons or property; and [o]ther criminal acts which adversely affect the health, safety and welfare of other tenants."⁸⁶ However, the TSAP only lists persons convicted of methamphetamine production, persons subject to the sex offender registration requirement, and persons evicted for drug-related criminal activity as those subject to mandatory denial of admission.⁸⁷ The TSAP also lists additional reasons for denial of admission. For example, families with members in the following categories of criminal activity will be found ineligible for a stated period of time, as shown in the following excerpt from NYCHA's TSAP:

a. Persons with conviction records.

- Persons convicted of Class A, B or C felonies. The family shall be ineligible until six years after the offending person has completed the sentence, not including probation and parole, with no further convictions or pending charges.
- Persons convicted of Class D or E felonies. The family shall be ineligible until five years after the offending person has completed the sentence, not including probation and parole, with no further convictions or pending charges.
- Persons convicted of Class A misdemeanors. The family shall be ineligible until four years after the offending person has completed the sentence, not including probation and parole, with no further convictions or pending charges.
- Persons convicted of Class B or unclassified misdemeanors. The family shall be ineligible until three years after the offending person has completed the sentence,

⁸⁵ 24 C.F.R. § 960.203.

⁸⁶ See NYCHA Tenant Selection and Assignment Plan, (last modified Feb. 12, 2020), at 22, *available at* <https://www1.nyc.gov/assets/nycha/downloads/pdf/TSAPlan.pdf>.

⁸⁷ *Id.*

not including probation and parole, with no further convictions or pending charges.”⁸⁸

- b. *Persons who have illegally used a controlled substance within the last three years.* The family shall be ineligible for a period of three years after the ineligibility finding, or until the family provides written verification from a state-licensed drug treatment agency that the offending person has been drug-free for 12 consecutive months and submits a current clean toxicology report.⁸⁹
- c. *Persons who have committed fraud, bribery, or any other corrupt or criminal act in connection with a governmental housing program.* If the offending person has not been criminally convicted, the family shall be ineligible for three years from the date they are declared ineligible. If there is a criminal conviction, the family shall be ineligible until three years after the offending person has completed the sentence, not including probation and parole, with no further convictions or pending charges.⁹⁰

NYCHA also has the power to terminate the tenancy of residents or permanently exclude them if they commit any crimes after being admitted to public housing. NYCHA’s termination of tenancy procedures are found in its Grievance Procedures document.⁹¹ One of the stated grounds for termination of tenancy is “non-desirability.”⁹² Non-desirability is defined broadly as: [T]he conduct or behavior of the tenant or any person occupying the premises of the tenant which constitutes: (1) a danger to the health and safety of the tenant’s neighbors (2) conduct on or in the vicinity of the Authority premises which is in the nature of a sex or morals offense (3) a source of danger or a cause of damage to the employees, premises or property of the Authority (4) a source of danger to the peaceful occupation of other tenants, or (5) a common law nuisance.⁹³ Notably, the Grievance Procedures do not elaborate on the types of criminal offenses that would qualify as “non-desirable,” nor does the document provide any clarity about whether an arrest is a sufficient trigger or whether a conviction is necessary. NYCHA does not publish statistics about the number

⁸⁸ *Id.* at 23.

⁸⁹ *Id.* at 25.

⁹⁰ *Id.*

⁹¹ See NYCHA Grievance Procedures, available at https://www1.nyc.gov/assets/nycha/downloads/pdf/grievance-procedure_040302.pdf.

⁹² *Id.* at 4.

⁹³ *Id.*

of termination of tenancy cases initiated against residents who commit crimes. According to City eviction data, however, in 2018, 383 families were evicted from NYCHA apartments.⁹⁴

C. Permanent Exclusion

Permanent exclusion is a strategy utilized by NYCHA by bringing a termination of tenancy action against individual members of a household who have committed certain crimes.⁹⁵ NYCHA's termination of tenancy procedures are found in its Grievance Procedures document.⁹⁶ One of the stated grounds for termination of tenancy is "non-desirability."⁹⁷ Non-desirability is defined broadly as:

[T]he conduct or behavior of the tenant or any person occupying the premises of the tenant which constitutes: (1) a danger to the health and safety of the tenant's neighbors (2) conduct on or in the vicinity of the Authority premises which is in the nature of a sex or morals offense (3) a source of danger or a cause of damage to the employees, premises or property of the Authority (4) a source of danger to the peaceful occupation of other tenants, or (5) a common law nuisance.⁹⁸

Notably, the Grievance Procedures do not elaborate on the types of criminal offenses that would qualify as "non-desirable." Permanent exclusion is permanent until the tenant of record applies to have the exclusion lifted.⁹⁹ Permanent exclusion happens in one of two ways: either it is imposed by a NYCHA hearing officer in order to resolve a tenancy termination administrative hearing, or it may be part of a negotiated settlement ("stipulation") by the tenant of record.¹⁰⁰

⁹⁴ Harry DiPrinzio, *Hundreds of NYCHA Evictions Raise Questions About Process*, CityLimits (Aug. 14, 2019) <https://citylimits.org/2019/08/14/nycha-evictions-rad-oceanbay/>.

⁹⁵ NYCHA, *Permanent Exclusion – Frequently Asked Questions*,

<https://www1.nyc.gov/site/nycha/residents/permanent-exclusion-faq.page> (last accessed Oct. 13, 2020).

⁹⁶ See NYCHA Grievance Procedures, available at https://www1.nyc.gov/assets/nycha/downloads/pdf/grievance-procedure_040302.pdf.

⁹⁷ *Id.* at 4.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Notably, permanent exclusion authorizes NYCHA to make unannounced home visits during the day to confirm the excluded individual's absence.¹⁰¹

D. HUD Guidance on Use of Arrest Records

In November 2015, HUD released guidance¹⁰² on the use of arrests in determining who can live in public housing. The HUD guidance informs PHAs and owners of other federally-assisted housing that (1) arrest records may not be the basis for denying admission, terminating assistance or evicting tenants; (2) HUD does not require that PHAs adopt “one strike” policies that automatically deny admission to anyone with a criminal record or that require automatic eviction any time a household member engages in criminal activity; and (3) PHAs have an obligation to safeguard due process rights of applicants and tenants.¹⁰³ Regarding the use of arrest records, the guidance notice states that because an arrest is not sufficient evidence that a person has actually engaged in criminal activity and because arrest records can be inaccurate and incomplete, “a PHA or owner may not base a determination that an applicant or household engaged in criminal activity warranting denial of admission, termination of assistance, or eviction on a record of arrest(s).”¹⁰⁴ However, the guidance notice clarifies that although an arrest *record* may not be used, PHAs may base a determination on “the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the PHA or owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct.”¹⁰⁵ Additionally, the guidance notice permits PHAs to utilize other evidence such as police reports detailing the circumstances of the

¹⁰¹ See New York City Department of Investigation, NYCHA Is Still Failing to Remove Dangerous Criminals from Public Housing, March 28, 2017, at 15, available at http://www1.nyc.gov/assets/doi/downloads/pdf/2017-Press_Release/10NYCHA%20MOU03-27-17wreport.pdf.

¹⁰² U.S. Dep't. of Housing and Urban Development, *Notice PIH 2015-19: Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*, (Nov. 2, 2015), available at <https://www.hud.gov/sites/documents/PIH2015-19.PDF>.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 3-4.

¹⁰⁵ *Id.* at 4.

arrest, witness statements, and other relevant documentation to assist them in making a determination that disqualifying conduct occurred.¹⁰⁶ Thus, the guidance notice leaves open the possibility for PHAs to continue to, in essence, use arrests to deny admission to applicants and evict or exclude residents.

E. NYCHA's Family Re-Entry Program

In 2014, NYCHA launched its Family Reentry Pilot Program (“FRPP”)¹⁰⁷ in collaboration with the Vera Institute, HUD, the New York City Department of Homeless Services, and the Corporation of Supportive Housing.¹⁰⁸ The FRPP was designed to reunite individuals leaving prison or jail with family members in public housing. In order to qualify for the program, applicants would need to meet certain criteria, including: the participant must be at least 16 years old; the family member must agree to participation, the family member must be in eligible NYCHA property (*i.e.*, Section 8 housing and certain tax-credit buildings are excluded, and applicants must meet minimum age requirements for senior-only developments); the participant must have been released within the last three years; and the participant must undergo intensive case management services.¹⁰⁹ In its pilot year, there were 85 participants in the program, although the program had been designed for up to 150 participants.¹¹⁰ In its 2017 evaluation of the pilot program, the Vera Institute estimated at least 500 people annually released from prison could reunite with their families at NYCHA if the program were expanded.¹¹¹

F. NYCHA's Proposed Changes to its Admission Policies

¹⁰⁶ *Id.*

¹⁰⁷ NYCHA, *Family Re-entry Pilot Program*, <https://www1.nyc.gov/assets/nycha/downloads/pdf/re-entry-brochure-20151109-en.pdf>.

¹⁰⁸ John Bae *et al.*, *Coming Home: An Evaluation of the New York City Housing Authority's Family Reentry Pilot Program*, Vera Institute, (Nov. 2016) https://www.vera.org/downloads/publications/NYCHA_report-032917.pdf.

¹⁰⁹ NYCHA, *Family Re-entry Pilot Program*, <https://www1.nyc.gov/assets/nycha/downloads/pdf/re-entry-brochure-20151109-en.pdf>.

¹¹⁰ Bae *et al.*, *supra* note 108 at 13.

¹¹¹ *Id.* at 30.

NYCHA is currently considering changes to its admission and occupancy policies as related to criminal justice. The proposed changes are currently open to public comment through October 28, 2020.¹¹² First, NYCHA proposes an “individualized review” process using a committee to conduct an in-depth review of an applicant facing denial on the basis of a criminal background check.¹¹³ The committee format would be modeled after the structure used in NYCHA’s FRPP. Second, NYCHA proposes “bolstering” the existing applicant screening process with the individualized review model to conduct a more in-depth review of an applicant with a criminal record and for applicants looking to add family members with a criminal record. As discussed above, HUD regulations require denial of admissions for persons convicted of producing methamphetamines in federally-assisted housing and persons who are subject to lifetime registration under a state sex offender registration program, while granting PHAs discretion in determining eligibility for other types of crimes. This proposal would allow for more individualized review of applicants’ criminal history lookback periods and scopes. Third, NYCHA proposes to change its lookback period for applicants based on illegal drug use from three years to one year, and would also incorporate the individualized review model to this eligibility criteria. Fourth, NYCHA proposes to amend its permanent exclusion policy. These changes would include amending permanent exclusion stipulations to include language automatically lifting the exclusion after five years free of crime, if the tenant of record approves. The proposed change would also set the minimum age for exclusion at 18.

G. *The 2017 Department of Investigations Report on Removal of Criminals from Public Housing*

¹¹² NYCHA, *New York City Housing Authority Changes to Policies Related to Criminal Justice*, available at <https://www1.nyc.gov/assets/nycha/downloads/pdf/CJ-Policies-For-Public-Comment-FINAL.pdf>.

¹¹³ *Id.* at 2.

On March 28, 2017, the New York City Department of Investigations (“DOI”) issued a report (“2017 DOI Report”)¹¹⁴ detailing the findings of a follow-up investigation on the role of the New York City Police Department (“NYPD”) and NYCHA in removing “dangerous” criminal offenders from NYCHA developments.¹¹⁵ DOI had previously investigated this issue in 2015, and had found that (1) NYPD did not fully inform NYCHA about criminal activity in public housing and (2) even when NYCHA knew of such activity, it failed to take sufficient action to remove the criminal offenders from public housing.¹¹⁶ Following up on its 2015 report, the 2017 DOI investigation made the following findings:

- Communications from NYPD to NYCHA about on-site arrests had improved since the 2015 report;
- NYPD had not improved reporting to NYCHA about off-site crimes committed by NYCHA residents;
- NYCHA failed to seek evictions for tenants who were knowingly sheltering dangerous criminal offenders;
- NYCHA continued to fail to take enforcement action when tenants violate permanent exclusion; and
- Even in cases in which investigators found permanently excluded household members living in a NYCHA apartment, NYCHA pursued another permanent exclusion agreement in the majority of such cases, rather than seeking eviction.

H. Previous Public Housing Hearings

The Committee on Public Housing previously explored NYCHA’s permanent exclusion of individuals with a criminal record at an oversight hearing on December 15, 2015 entitled “Examining NYCHA’s Compliance with HUD’s Admissions Regulations and New Permanent

¹¹⁴ New York City Department of Investigation, *NYCHA Is Still Failing to Remove Dangerous Criminal Offenders from Public Housing*, (Mar. 28, 2017), available at http://www1.nyc.gov/assets/doi/downloads/pdf/2017-Press_Release/10NYCHA%20MOU03-27-17wreport.pdf.

¹¹⁵ *Id.*

¹¹⁶ See generally New York City Department of Investigation, *NYPD and NYCHA’s Roles in Controlling Violent and Narcotics Crime By Removing Criminal Offenders from Public Housing*, (Dec. 8, 2015), available at http://www1.nyc.gov/assets/doi/downloads/pdf/2015/Dec15/pr41nycha_nypd_mou_120815.pdf

Exclusion Policy,”¹¹⁷ On April 24, 2017, the Committee conducted another hearing examining NYCHA’s permanent exclusion policy, following the release of the 2017 DOI Report.¹¹⁸

VII. ISSUES AND CONCERNS

At today’s hearing, the Committees would like to learn more about how the City ensures that New Yorkers leaving detention facilities find housing, specifically regarding DOC’s discharge programming, MOCJ hotel rooms and reentry programs, and NYCHA exclusionary rules and family reunification programs. In addition, the Committees would like to learn about what efforts the City has employed during the pandemic can be made permanent.

VIII. LEGISLATION

Below is a brief summary of the legislation being heard by the Committee on Housing and Buildings at this hearing. This summary is intended for informational purposes only and does not substitute for legal counsel. For more detailed information, you should review the full text of the bill, which is attached below.

A. *Int. No. 1760, a Local Law to amend the administrative code of the city of New York, in relation to tenant data privacy*

The proposed legislation would amend subchapter 2 of chapter 2 of title 27 of the Administrative Code of the City of New York by adding a new article 21-A, establishing a scheme for regulating the collection and use of residential tenant data collected through the use of keyless entry systems.

¹¹⁷ The transcript, testimony, and other relevant materials are available online at legistar.council.nyc.gov/MeetingDetail.aspx?ID=448544&GUID=A8D970CC-F8F2-43FE-A033-981551C108C1&Options=info|&Search=v.

¹¹⁸ [The](https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3012930&GUID=73990F91-D9A9-4195-8818-95CE3E8B12CA&Options=&Search=) transcript, testimony, and other relevant materials are available online at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3012930&GUID=73990F91-D9A9-4195-8818-95CE3E8B12CA&Options=&Search=>.

Section 27-2051.5 provides definitions for the terms “authentication data,” “biometric identifier,” “minor,” “reference data,” “smart access building” and “smart access system.”

Subdivision a of section 27-2051.6 prohibits the collection of certain tenant data unless the tenant has expressly consented to the use of that data in the multiple dwelling’s smart access system. Such data is limited to the tenant’s name, apartment number, preferred method of contact, and where applicable, biometric identifier. Subdivision b of section 27-2051.6 requires owners of multiple dwellings that utilize smart access systems to destroy the data collected for the use of such system under certain circumstances, including where a tenant has withdrawn consent, where a tenant has permanently vacated the multiple dwelling, or where the data was collected in violation of certain provisions of this chapter. Subdivision c of section 27-2051.6 prohibits the collection of data related to a tenant’s utility, except for monthly totals, and internet usage.

Subdivision a of section 27-2051.7 sets forth certain prohibitions for entities that collect data for use in a smart access system in a multiple dwelling. Such entities are prohibited, *inter alia*, from i) selling, sharing or disclosing of such data to third parties; ii) collecting the data of a minor except as authorized by such minor’s parent or guardian; and iii) using this data to track tenants’ relationship with their guests. Subdivision b of section 27-2051.7 sets forth additional prohibitions for owners of multiple dwellings that utilize smart access systems. Such owners are prohibited from i) using such data for any purpose other than to monitor entrances and exits to the building and to common areas in the building; ii) limiting a tenant’s guest’s access to the building; and iii) requiring tenants to use such a system to access their own dwelling units.

Section 27-2051.8 requires the owner of a smart access building to provide a written privacy policy to tenants.

Section 27-2051.9 establishes a civil penalty of up to \$6,000 for each violation.

The proposed legislation would take effect immediately.

Int. No. 1760

By Council Members Levine, Kallos, Torres, Rivera, Brannan, Cabrera, Rosenthal, Menchaca, Reynoso, Cornegy, Chin, Ampry-Samuel, Holden, Louis, Richards, Lander, Koo, Maisel, Rose, Constantinides, Ayala, Gibson, Grodenchik, Powers, Moya, Adams and Koslowitz

A Local Law to amend the administrative code of the city of New York, in relation to tenant data privacy

Be it enacted by the Council as follows:

Section 1. Subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is amended by adding a new article 21-A to read as follows:

ARTICLE 21-A

TENANT DATA PRIVACY

§ 27-2051.5 Definitions.

§ 27-2051.6 Data collection.

§ 27-2051.7 Prohibitions.

§ 27-2051.8 Privacy policies.

§ 27-2051.9 Penalties.

§ 27-2051.5 Definitions. As used in this article, the following terms have the following meanings:

Authentication data. The term “authentication data” means the data collected at the point of authentication to grant a user entry to a smart access building through such building’s smart access system.

Biometric identifier. The term “biometric identifier” means a retina or iris scan, fingerprint, voiceprint, or record of hand, face geometry or other similar feature.

Minor. The term “minor” means a person under the age of eighteen years.

Reference data. The term “reference data” means the information used for reference by a smart access system at the point of authentication.

Smart access building. The term “smart access building” means a multiple dwelling that utilizes a smart access system.

Smart access system. The term “smart access” means any system that uses electronic or computerized technology, a radio frequency identification card, a mobile phone application, biometric identifier or any other digital technology in order to grant entry to a multiple dwelling.

§ 27-2051.6 Data collection. a. An owner of a smart access building may not collect reference data from a tenant except where such tenant has expressly consented to the use of such smart access building’s smart access system. Such owner may collect only the minimum authentication data and reference data necessary to enable the use of such smart access system in such building, and shall be limited to: (i) the tenant’s name, (ii) the tenant’s apartment number, (iii) the tenant’s preferred method of contact, and, if such smart access system utilizes biometric identifiers (iv) the tenant’s biometric identifier. A copy of such reference data may be retained only by the tenant and by the owner of the tenant’s building if such owner has been given access to such reference data by such tenant. In a building where a smart access system is used to grant entry to a dwelling unit, the owner of such building shall, at the request of the tenant of such dwelling unit, retain for the duration of the tenancy any authentication data and reference data generated in the use of such smart access system to access such dwelling unit.

b. An owner of a smart access building shall destroy any authentication data collected from such smart access system no later than 90 days after such data has been collected. Reference data for any tenant who has permanently vacated a smart access building shall be destroyed no later than 90 days after such tenant has permanently vacated such building. Reference data for any tenant who has withdrawn authorization from an owner who had previously been given access to such reference data pursuant to subdivision a shall be destroyed no later than 90 days after such

authorization has been withdrawn. Any data collected in violation of the prohibitions set forth in paragraphs 3, 4, 5 and 6 of subdivision a of section 27-2051.7 shall be destroyed immediately.

c. Any information that an owner of a multiple dwelling collects about a tenant's use of gas, electricity or any other utility shall be limited to such tenant's total monthly usage. It shall be unlawful for an owner of a multiple dwelling to collect any information about a tenant's use of internet service.

§ 27-2051.7 Prohibitions. a. It shall be unlawful for any entity that collects data pursuant to section 27-2051.6 to:

1. sell, lease or otherwise disclose such data to another person except pursuant to a subpoena, court ordered warrant or other authorized court ordered process;

2. utilize any form of location tracking in the equipment or software of a smart access system;

3. use a smart access system to capture the reference data of any minor, except as authorized by such minor's parent or guardian;

4. use a smart access system to collect information on the relationship status of tenants and their guests;

5. use a smart access system to collect information about the frequency and time of use of such system by a tenant and their guests;

6. use a smart access system to collect reference data from a person who is not a tenant in such smart access building, except as authorized by the tenant who has granted access to such person;

7. share any such data with a third party unless the tenant has given express authorization and has received in writing: (i) the name of the third party, (ii) the intended use of such data by such third party, and (iii) any privacy policies of such third party; and

8. share any data that may be collected from a smart access system of any minor, unless such entity has received the written authorization of such minor's legal parent or guardian.

b. It shall additionally be unlawful for any owner of a smart access building, or an agent thereof, to:

1. utilize data collected through a smart access system for any purpose other than to monitor entrances and exits to the multiple dwelling and to entrances to common areas in such building, including but not limited to laundry rooms, mail rooms, and the like;

2. use a smart access system to limit the time or place of entrance by a guest or any other person authorized by a tenant to enter such building; and

3. require a tenant to use a smart access system to gain entry to such tenant's dwelling unit.

§ 27-2051.8 Privacy policies. a. The owner of a smart access building, or an agent thereof, must provide to tenants a written policy that describes, at a minimum:

1. the type of data to be collected by the smart access system;

2. the retention schedule of such data;

3. guidelines for permanently destroying such data; and

4. the process used to add persons authorized by the tenant on a temporary basis to the smart access system.

b. The owner of a smart access building, or an agent thereof, shall make available to tenants, if different from or not included in the policy provided in subdivision a, any written privacy policy of the entity that developed the smart access system utilized in such building.

§ 27-2051.9 Penalties. A person who violates any provision of this article shall be liable for a civil penalty of not more than \$6,000 for each violation.

§ 2. This local law takes effect immediately.

AS
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