FAIR CHANCE HIRING UPDATE

HUMAN RESOURCES DEPARTMENT

Economic Opportunity Committee Briefing

October 12, 2015

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PURPOSE

Provide an update and identify next steps on Fair Chance Hiring policies and Ban-the-Box expansion to all employers in Austin.

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COUNCIL RESOLUTIONS

- October 16, 2008, Resolution 20081016-012
  - *The City amends its employment application to no longer require disclosure of past criminal history during the initial job application process for certain job positions within the city.*
- May 21, 2015, Resolution 20150521-025
  - *The City Manager is directed to provide staff support for a stakeholder process to develop language for potential policies to promote delaying inquiry into conviction history until later in the employment hiring process for private-sector employers. The stakeholder group should consider the National Employment Law Project recommended ordinance language as a baseline draft for a citywide fair chance policy. The stakeholder group should also consider policy options for employers contracting with the City and employers participating under a Chapter 380 Economic Development Agreement.*
  - *The City Manager shall present options to the Council Economic Opportunity Committee no later than September 14, 2015**

**Extension to October 2015 meeting*

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LEGAL AUTHORITY

As a home-rule municipality with full power of local self-government, the City has the authority to enact ordinances that affect individuals and private businesses located in the City (Texas Local Government Code §51.072). This means that the City can enforce any ordinance "necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants," so long as that ordinance is not prohibited by a state or federal law (Tex. Local Gov't Code §54.004).

To date, the Law Department has not identified a state or federal law that would specifically prohibit the City from enacting any type of regulation of pre-employment criminal history checks.

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ACTIVITIES TO DATE

May 21, 2015 - Resolution passed by City Council

-> *June* – Staff preparation and stakeholder group formation

-> *July and August* – Four stakeholder meetings held

-> *September* – Staff analysis and benchmarking

-> *October* – Presentation to Council Committee

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IMPORTANCE OF FAIR CHANCE HIRING

- Studies indicate that stable employment is one of the best predictors of post-conviction success.
- Successfully integrating people with conviction records into the community through employment reduces recidivism, strengthens families and leads to safer communities.
- People with records suffer from discrimination in many areas of life, including employment, housing, education and many forms of social service benefits.
- People of color are arrested, convicted, and incarcerated in numbers disproportionate to their representation in the population as a whole.

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UNDERSTANDING BAN THE BOX AND FAIR CHANCE HIRING

The information provided by National Employment Law Project (NELP) explains "Ban the Box" vs. Fair Chance Policies:

- "Ban the box" removes the conviction history check-box from a job application
- Fair-chance policies include the following:
  - Integrating EEOC arrest and conviction record guidelines, which require employers to take into account time passed since the offense, whether the offense is related to the job position, and evidence of rehabilitation; and
  - Make sure background standards are accurate, consistent and transparent.

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STAKEHOLDER GROUP: COUNCIL RESOLUTION LANGUAGE

- Invitations for the stakeholder meetings should be sent to:
  - Small business community
  - All Austin area chambers of commerce
  - Minority Trade Alliance
  - Austin Area Urban League
  - Texas Advocates for Justice
  - Texas Criminal Justice Coalition
  - Minorities for Equality in Employment, Education, Liberty and Justice
  - Mt. Zion Criminal Justice Ministries
  - Austin/Travis County Re-entry Round Table
  - Central Texas Building and Construction Trades Council
  - African American Youth Harvest Foundation
  - Austin Interfaith
  - Texas Civil Rights Project
  - Other community member who are interested

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STAKEHOLDER GROUP: ATTENDEES AT ONE OR MORE MEETINGS

- Travis County Sheriff Department
- Greater Austin Asian Chamber of Commerce
- Greater Texas Landscape Services
- Austin Gay and Lesbian Chamber of Commerce
- Austin Community College
- Austin Area Urban League
- MEEEL Justice Center
- Austin-Travis County Re-Entry Roundtable
- Hoover's Restaurant
- Texas Civil Rights Project
- African-American Youth Harvest Foundation
- Labors International Union of North America
- Texas Advocates for Justice
- Equal Justice Center
- Xoffenders' Council
- City of Austin Economic Development Department

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STAKEHOLDER GROUP RECOMMENDATIONS 8/18/15

- "Ban the Box"
  - Public and Private employers with 10 or more employees
  - Applicant not asked about criminal history until identified as top candidate
  - Ordinance go into effect sixty (60) days from passage
- Fair Chance Hiring (FCH)
  - City only do business with vendors that have adopted FCH practices
  - Employer maintain records of applicants who were provided offers
  - Entities retain personnel and employment records
  - Positions requiring background checks identified prior to application
  - Employers shall use TxDPS to conduct background checks
  - Require job postings/announcement to include language on background checks
  - Candidates shall receive a written conditional offer letter or notification of non-selection.
  - Information received shall remain confidentiality.
  - City shall review vendor policies and ensure consistency with ordinance

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STAFF ACTIVITY SINCE LAST STAKEHOLDER MEETING

- Identified and analyzed ordinances in eight benchmark cities.
  - Seattle, Buffalo, San Francisco, Baltimore, Columbia (MO), Newark, New York, Washington D.C.
- Defined twelve key provisions to confirm areas of commonality
- Created surveys and conducted live interviews with five cities to gain detail on enforcement processes
- Discussed legal issues and consulted with City Law department

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CITY, COUNTY AND STATE POLICIES

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PRIVATE EMPLOYERS

- Private employers that have Banned the Box
  - Walmart
  - Target
  - Accenture
  - Home Depot
  - Starbuck's
  - Proctor and Gamble
  - Microsoft
  - Koch Industries
  - Royal Dutch Shell
  - British Petroleum
  - Bed, Bath and Beyond
  - Waste Management
  - Regency Centers

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SUMMARY OF BENCHMARKED CITIES

City	Date Law Effective	Minimum Employees	Who does the enforcement?	Penalties
Newark, NJ	11/18/12	15	Human Rights Commission	-Type 1 - $500 -Type 2 - $1000
Buffalo, NY	1/1/14	15	Committee on Civil Rights and Community Relations	-1st offense- $500 -Subsequent- $1000
Columbia, MO	1/1/14	1	Human Rights Commission	-Each offense - up to $1000 and/or - up to 30 days imprisonment
Baltimore, MD	8/13/14	10	Baltimore Community Relations Commission	-Each offense - up to $500 and/or - up to 90 days imprisonment
New York, NY	10/27/15	4	Commission on Human Rights	(Specific language not found in ordinance.)

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SUMMARY OF BENCHMARKED CITIES
(CONTINUED)

City	Date Law Effective	Minimum Employees	Who does the enforcement?	Penalties
Seattle, WA	11/1/13	1	Seattle Office of Civil Rights	-1st offense- Warning -2nd offense- $750 (100% to charging party) -Subsequent- $1000 (100% to charging party)
San Francisco, CA	1/13/14	20	Office of Labor Standards	Aggrieved person: -liquidated damages in the amount of $50/day, back pay, reinstatement, benefits/pay unlawfully withheld, reasonable attorney's fees & costs
District of Columbia	12/17/14	10	Office of Human Rights	Employer (based on employee size): 11-30 – Up to $1000 31-99 – Up to $2500 100+ – Up to $5000 Aggrieved person: -back pay, reinstatement, compensatory damages and reasonable attorney's fees

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ENFORCEMENT DETAILS FROM SELECTED INTERVIEWS

City	Date Law Effective	Who does the enforcement?	Offenses reported?	How it was investigated?	What were the repercussions?
Seattle, WA	11/1/13	Seattle Office of Civil Rights	72 complaints, 51 closed, 3 assessed penalties	Complaints filed, assessed, and investigated. (Anonymous complaints accepted). Violations then determined.	Not much due to active participation from business community in all stages
Columbia, MD	1/1/14	Human Rights Commission	3 total. 2 mediated successfully. 1 was exempt. All resolved.	Complaints are filed and investigated, and educational approach taken and	Have not proceeded with prosecution on anyone.
New York, NY	10/27/15	Commission on Human Rights	None to date	Investigated similar to other civil rights law. Plan: no grace period, an expedited process, sending cease and desist letters, and investigating violations.	None yet. All repercussion will be civil, only criminal if orders violated.
San Francisco, CA	8/13/14	Office of Labor Standards	29 complaints logged	Most common: still having the question on the application; we call and it is resolved. All issues have been resolved.	Not much of anything because penalties are low.
District of Columbia	12/17/14	Office of Human Rights	488 filed complaints	Use the same processes as for investigating civil rights laws	Felt the effect of a lack of Chamber involvement. Ordinance failed four times, but passed after outreach/education in the business community.

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FAIR CHANCE HIRING ANALYSIS: SEATTLE, WA

City/ Date	Who does the enforcement?	Penalties?	Offenses reported?	How it was investigated?	What were the repercussions?
Seattle, WA November 1, 2013	Seattle Office of Civil Rights	• 1st offense a warning (Notice of infraction and offer of agency assistance) • 2nd offense up to $750, payable to the charging party • Subsequent Offenses up to $1000 each, payable to the charging party	• They have received 72 complaints resulting in 49 enforcement actions, 3 of which have been assessed fines. They have closed (resolved) 51 cases. They are currently working on a 2-year report.	• Two offices in one: They have the Seattle Office of Civil Rights (Fair Housing/EEO Office) and the Office of Labor Standards which enforces their 4 current labor standards laws. • They use the same basis system across both offices for conducting investigations. • It is an on-call situation when someone brings an issue to their attention or a set of issues and they look into them. • A potential charging party comes forward with a concern/set of experiences. They describe to them what happened. They go through their intake process and from there; they triage to determine how to move forward. -Assuming the description of the situation meets the basic criteria of a charge, they will move forward to conduct an investigation. • For Labor Standards laws in particular, they do allow people to make their complaints anonymously.	• They had active participation from the business community in the drafting of the law. Once the law was passed, they had a working group of businesses and business organizations that provided them with input to craft the administrative rules.

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POLICY PROVISIONS:
THE POLICY STRUCTURE IN 8 BENCHMARK CITIES

Provision	%	Comments from Research
1. Definitions	75%	The policies with definitions were easier to understand and interpret.
2. Ban the box	100%	Although all policies included some language on this important topic, not all policies clearly defined it and the term can have a negative connotation.
3. Clarifying when to inquire about conviction history	100%	Results showed an even split where half of the cities defined that inquiries could be made "after the 1st interview" and the other half stated "once an offer is made".
4. Evaluation criteria for criminal history	88%	Municipalities consistently provided guidance and expectations on how to assess relevant criminal history.
5. Jobs exempt from the policies	100%	State and federal law requirements were cited as exceptions.

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POLICY PROVISIONS (CONTINUED): THE POLICY STRUCTURE IN 8 BENCHMARK CITIES

Provision	%	Comments from Research
6. Provide notice of adverse action	63%	Employers must identify disqualifiers and provide a copy of the report.
7. Define period for filing grievance/dispute	75%	These three categories are very inter-related. There were inconsistencies between what was discussed as a 'dispute of the decision' on an applicants qualifications versus a general violation of the ordinance.
8. Hold job open	50%	
9. Timeframe for employer to reconsider	38%	
10, Tracking and reporting activity metrics	38%	For those who defined reporting, one required employers to track, the other two required the City to track.
11. Penalties for non-compliance	88%	There was a high-level of agreement that a progressive penalty system was necessary.
12. Non-Retaliation Clause	50%	It is unclear what led some cities to include this provision and not others.

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NEXT STEPS

- Evaluate potential ordinance options and fiscal, management, administrative, legal, and compliance impacts.
- Obtain input from private employers – large and small
- Consider educational outreach plan needed for potential ordinance.

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