

# Draft Policy Concepts

| Criteria        | Concept A                                                                                                                                                                                                                                                                                                                                                                                             | Concept B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Concept C                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| Concept Options | <ul style="list-style-type: none"><li>Ban the Box<ul style="list-style-type: none"><li>Removing the question of criminal history from both paper and online applications. For businesses that don’t have an application, this would also have to extend to non-written inquiries.</li></ul></li><li>Includes Definitions<ul style="list-style-type: none"><li>Employer 15 or more</li></ul></li></ul> | <ul style="list-style-type: none"><li>Ban the Box<ul style="list-style-type: none"><li>Removing the question of criminal history from both paper and online applications. For businesses that don’t have an application, this would also have to extend to non-written inquiries.</li></ul></li><li>Includes Definitions<ul style="list-style-type: none"><li>Employer: 10 or more</li></ul></li><li>Defines when an employer can inquire into criminal background<ul style="list-style-type: none"><li>When top candidate is identified</li></ul></li><li>Defines Evaluation Criteria<ul style="list-style-type: none"><li>Encouraging employers to reevaluate positions that do not require background checks</li></ul></li><li>Notification of Adverse Action (Non-Selection)<ul style="list-style-type: none"><li>No period for appeal</li></ul></li><li>Retaliation clause to protect those who file complaints</li></ul> | <ul style="list-style-type: none"><li>Ban the Box<ul style="list-style-type: none"><li>Removing the question of criminal history from both paper and online applications. For businesses that don’t have an application, this would also have to extend to non-written inquiries.</li></ul></li><li>Includes Definitions<ul style="list-style-type: none"><li>Employer 10 or more</li></ul></li><li>Defines when an employer can inquire into criminal background<ul style="list-style-type: none"><li>When a written or verbal conditional offer is made</li></ul></li><li>Defines Evaluation Criteria<ul style="list-style-type: none"><li>Require employers to reevaluate positions that do not require Background checks.</li><li>Relevancy of conviction, rehabilitation</li></ul></li><li>Notification of Adverse Action (Non-Selection)<ul style="list-style-type: none"><li>Appeal period to be held</li></ul></li><li>Retaliation clause to protect those who file complaints</li><li>Requirement of all City Vendors to comply with ordinance</li><li>Job Posting/Advertisement language must be all inclusive and cannot discriminate</li><li>Require businesses to only use the DPS as their vendor for running criminal background investigations</li><li>Employers must maintain records and all information must be tracked and reported</li></ul> |
|                 | *Employer Exemptions will include existing state and federal regulations                                                                                                                                                                                                                                                                                                                              | *Employer Exemptions will include existing state and federal regulations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | *Employer Exemptions will include existing state and federal regulations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Education Plan  | Education and outreach plan for Concept A: <ul style="list-style-type: none"><li>3–6 month campaign</li><li>Hire consultant firm to do extensive promotion (i.e. commercials, public service announcements, workshops, re-entry career fair, etc.)</li><li>City Website</li><li>Social Media posts</li><li>News Conference</li><li>News Release</li></ul>                                             | Education and outreach for Concept B: <ul style="list-style-type: none"><li>9-12-month campaign</li><li>Hire consultant firm to do extensive promotion (i.e. commercials, public service announcements, workshops, re-entry career fair, etc.)</li><li>City Website</li><li>News Conference</li><li>News Release</li><li>Flyers</li><li>Create a special City Website for Fair Chance Hiring</li><li>Online Toolkit</li><li>Educational Workshops</li><li>Strategically placed advertisements on billboards and buses</li><li>Partner with Austin Chambers, BIG Austin to conduct educational workshops.</li></ul>                                                                                                                                                                                                                                                                                                             | Education and outreach for Concept C: <ul style="list-style-type: none"><li>12-month campaign</li><li>Hire consultant firm to do extensive promotion (i.e. commercials, public service announcements, workshops, re-entry career fair, etc.)</li><li>City Website</li><li>Social Media posts</li><li>News Conference</li><li>News Release</li><li>Flyers</li><li>Create a special City Website for Fair Chance Hiring</li><li>Online Toolkit</li><li>Educational Workshops</li><li>Strategically placed advertisements on billboards and buses</li><li>Partner with Austin Chambers, BIG Austin to conduct educational workshops.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| Enforcement and fines    | <ul style="list-style-type: none"><li>Investigations go to EEO/FH</li><li>3-6 month Education plan with warnings, no assessments of fines</li><li>Tiered fining system after end of 3-6 months<ul style="list-style-type: none"><li>1<sup>st</sup> infraction: warning with a 3 month period to correct violation</li><li>2<sup>nd</sup> infraction: \$250 per infraction</li><li>Any subsequent violations: \$500 per infraction</li></ul></li></ul> | <ul style="list-style-type: none"><li>Investigation goes to EEO/FH</li><li>Draft: Fair Chance Hiring Adjudication Process<ul style="list-style-type: none"><li>Equal Employment/Fair Housing Office Investigation: Issue Preliminary Determination</li><li>Employer can pay fine or appeal, or employee can appeal.</li><li>Hearing Officer conducts hearing and issues Proposal for Decision to Human Rights Commission for action.</li><li>Human Rights Commission issues final decision.</li></ul></li><li>9-12 month education plan with warnings, no assessment of fines</li><li>Tiered fining system after 9-12 months<ul style="list-style-type: none"><li>1<sup>st</sup> infraction: warning with 3 months to correct violation</li><li>2<sup>nd</sup> infraction: \$250 per violation</li><li>Any subsequent infraction: \$500 per infraction</li></ul></li></ul>                                                                                                                                                                                                                                                                                           | <ul style="list-style-type: none"><li>Investigation goes to EEO/FH</li><li>Draft: Fair Chance Hiring Adjudication Process<ul style="list-style-type: none"><li>Equal Employment/Fair Housing Office Investigation: Issue Preliminary Determination</li><li>Employer can pay fine or appeal, or employee can appeal.</li><li>Hearing Officer conducts hearing and issues Proposal for Decision to Human Rights Commission for action.</li><li>Human Rights Commission issues final decision.</li></ul></li><li>1 year education plan with warnings, no assessment of fines</li><li>Tiered fining system after 1 year<ul style="list-style-type: none"><li>1<sup>st</sup> infraction: warning with 3 months to correct violation</li><li>2<sup>nd</sup> infraction: \$250 per infraction</li><li>Any subsequent infraction: \$500 per infraction</li></ul></li></ul>                                                                                                                                                                                    |
| Legal Impacts            | <ul style="list-style-type: none"><li>No state or federal preemption; can enact ban-the-box in home rule city.</li><li>Administrative Enforcement: less ability to enforce, cannot subpoena records, (Fourth Amendment), would need to file suit in County or District Court to collect fines</li></ul>                                                                                                                                               | <ul style="list-style-type: none"><li>Notification: Possible First Amendment issues (can’t be forced to say something you don’t want to say). “Adverse action” is a legal term of art that implies a private cause of action which we cannot create. Recommend language change if added to draft ordinance.</li><li>Retaliation clause: need clarity. Who are we protecting and how? Cannot create private right of action so be clear on what this would mean. If violation found, only remedy would be fine paid to the City of Austin</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <ul style="list-style-type: none"><li>City Vendors: Cannot put into contracts</li><li>“Discrimination” is a legal term of art with same concerns as “adverse action”</li><li>No rational basis to use DPS over any other entity. More protections with consumer reporting entities covered by FCRA.</li><li>Record Maintenance: only enforceable if Class C Misdemeanor prosecuted through Municipal Court</li><li>Criminal Enforcement: Class C Misdemeanor-if employer is found guilty, can use Municipal Court process to subpoena records and ensure collection of fines</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Business Sector Concerns | Concerns of the Private Sector stakeholders for Concept A: <ul style="list-style-type: none"><li>Most businesses do not object to this policy.</li><li>One concern is the cost to businesses to change their online applicant tracking system.</li></ul>                                                                                                                                                                                              | Concerns of the Private Sector stakeholders for Concept B: <ul style="list-style-type: none"><li>Includes Definitions<ul style="list-style-type: none"><li>Businesses prefer specific definitions including definitions of sub-contractors, staffing agencies, employers, etc.</li></ul></li><li>Defines when an employer can inquire into criminal background.<ul style="list-style-type: none"><li>There was very little consensus among businesses on ideal timing. Some expressed the concern that delaying too long would be an administrative burden while others supported delayed inquiry.</li></ul></li><li>Defines Evaluation Criteria<ul style="list-style-type: none"><li>Although some businesses suggested that the employer should define relevancy, there was significant support for a time limit for consideration with the most support for 7 years.</li><li>There is consensus that arrests not leading to conviction which have already been adjudicated should not be considered.</li></ul></li><li>Employer Exemptions<ul style="list-style-type: none"><li>Various employers recommended exempting the following groups:</li></ul></li></ul> | Concerns of the Private Sector stakeholders for Concept C:<br><br><b>All of the concerns from Concepts B apply here, plus:</b> <ul style="list-style-type: none"><li>Requirement of all City Vendors to comply with ordinance.<ul style="list-style-type: none"><li>Businesses tend to agree that the city should not do business with vendors that do not comply with city ordinances.</li></ul></li><li>Job Posting/Advertisement language must be all inclusive and cannot discriminate.<ul style="list-style-type: none"><li>Businesses tend to agree that if a job requires a background check, it should be posted on the advertisement.</li><li>Some support for a statement that ex-offenders are hired on a case by case basis.</li></ul></li><li>Require businesses to only use the DPS as their vendor for running criminal background investigations.<ul style="list-style-type: none"><li>There is concern among businesses that TX DPS reports are incomplete. It doesn’t take into account: other states, military</li></ul></li></ul> |

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| Resolution Stakeholder concerns | <p>Concern of the stakeholders regarding Concept A</p> <ul style="list-style-type: none"><li>• Definitions<ul style="list-style-type: none"><li>○ There would be concerns that the policy wouldn’t be specific enough if definitions weren’t included. (Which would also allow for too much wiggle room).</li></ul></li><li>• When to inquire into criminal background<ul style="list-style-type: none"><li>○ Stakeholders would have concerns that there wouldn’t be a specified time about when to inquire into an applicant’s background. There was strong consensus that the inquiry into criminal history should be done as late as possible in the hiring process.</li></ul></li><li>• Evaluation Criteria<ul style="list-style-type: none"><li>○ There would be concerns if the policy didn’t include specifics to evaluation criteria that employers should use. There was consensus that those hiring should take into consideration: length of time since conviction, rehabilitation efforts, etc.</li></ul></li><li>• Employer Exemptions<ul style="list-style-type: none"><li>○ There was consensus that the policy should be in line with pre-existing federal or state laws that exempt businesses from this (e.g. positions working with vulnerable populations, law enforcement, etc)</li></ul></li><li>• Penalties for non-compliance<ul style="list-style-type: none"><li>○ There was consensus from the stakeholders that there should be</li></ul></li></ul> | <p>Concerns of the stakeholders regarding Concept B:</p> <ul style="list-style-type: none"><li>• SEE Concept A concerns on topics:<ul style="list-style-type: none"><li>○ Evaluation Criteria, Notification, retaliation clause, City Vendors, Job posting/advertisement language, TX DPS use, and Records retention, City Vendors, Job posting/advertisement language, TX DPS use, and Records retention</li></ul></li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <p>Concerns of stakeholders regarding Concept C:</p> <ul style="list-style-type: none"><li>• None</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                     |

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|                                             | <p>some sort of penalty system in order to ensure enforcement and compliance with this law.</p> <ul style="list-style-type: none"><li>• Notification of Adverse Action (Non-Selection)<ul style="list-style-type: none"><li>○ The stakeholders believed that it was important that the policy require employers to provide the applicant a notification of non-selection (when a candidate is denied due to their background check).</li></ul></li><li>• Retaliation clause<ul style="list-style-type: none"><li>○ There was consensus amongst the stakeholders that the policy should use a retaliation clause in order to protect the applicant/complainant.</li></ul></li><li>• City Vendors<ul style="list-style-type: none"><li>○ The stakeholders would be concerned that there would be no stipulation about the Vendors that the City does business with being required to utilize these fair chance hiring policies.</li></ul></li><li>• Job Posting/Advertisement language<ul style="list-style-type: none"><li>○ The Stakeholders wanted there to be specific requirements about what an employer could put in an advertisement in order to make sure that no one is discriminated against.</li></ul></li><li>• Using DPS for Criminal background Inquires<ul style="list-style-type: none"><li>○ There would be concerns from the stakeholder group about the City not requiring employers to use TX DPS because some private companies can have inaccurate information.</li></ul></li><li>• Record Retention<ul style="list-style-type: none"><li>○ The stakeholders would be concerned that this policy would not set forth some form of record retention. (E.g. Similar to EEO record retention requirements)</li></ul></li></ul> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Possible Administrative Needs and Resources | <ul style="list-style-type: none"><li>• Recurring Costs<ul style="list-style-type: none"><li>○ 1FTE salary &amp; benefits      \$120,000</li><li>○ Ongoing IT system maintenance    \$1,800<ul style="list-style-type: none"><li>▪ Sub-Total: \$121,800</li></ul></li></ul></li><li>• One Time Costs<ul style="list-style-type: none"><li>○ IT System – Case Management      \$15,000</li><li>○ Employee Set-up costs      \$7,690<ul style="list-style-type: none"><li>▪ Sub-Total: \$22,690</li></ul></li></ul></li></ul> <p>Grand Totals    <b>\$144,490</b></p> <p>Note: these cost estimates do not include projected funding for education and marketing</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <ul style="list-style-type: none"><li>• Recurring Costs<ul style="list-style-type: none"><li>○ 3 FTE salary &amp; benefits      \$184,899</li><li>○ Ongoing IT system maintenance    \$1,800<ul style="list-style-type: none"><li>▪ Sub-Total: \$186,699</li></ul></li></ul></li><li>• One Time Costs<ul style="list-style-type: none"><li>○ IT System – Case Management      \$15,000</li><li>○ Employee Set-up costs      \$23,076<ul style="list-style-type: none"><li>▪ Sub-Total: \$38,076</li></ul></li></ul></li></ul> <p>Grand Totals    <b>\$224,775</b></p> <p>Note: these cost estimates do not include projected funding for education and marketing</p> | <ul style="list-style-type: none"><li>• Recurring Costs<ul style="list-style-type: none"><li>○ 4 FTE salary &amp; benefits      \$311,204</li><li>○ Ongoing IT system maintenance    \$1,800<ul style="list-style-type: none"><li>▪ Sub-Total: \$313,004</li></ul></li></ul></li><li>• One Time Costs<ul style="list-style-type: none"><li>○ IT System – Case Management      \$15,000</li><li>○ Employee Set-up costs      \$30,766<ul style="list-style-type: none"><li>▪ Sub-Total: \$45,766</li></ul></li></ul></li></ul> <p>Grand Totals    <b>\$358,770</b></p> <p>Note: these cost estimates do not include projected funding for education and marketing</p> |