

AN ORDINANCE ESTABLISHING FAIR CHANCE HIRING STANDARDS IN THE CITY, CREATING A CIVIL PENALTY, AND CREATING AN OFFENSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Part 1. Title 4 of the City Code is amended by adding a new Chapter 4-15 to read:

CHAPTER 4-15. FAIR CHANCE HIRING.

§4-15-1 FINDINGS.

(A) The council finds that denying an employment opportunity to an otherwise qualified person based on the person's criminal history that is not relevant to the job under consideration:

- (1) is unjust;
- (2) is detrimental to the health, safety, and welfare of the residents of the City;
- (3) prevents the reintegration of the person into the community;
- (4) creates a burden on public resources and law enforcement;
- (5) contributes to crime and recidivism; and
- (6) contributes to unemployment and harms the local economy.

(B) The council further finds that it is within the police power and the responsibility of the City to remedy the problems enumerated in subsection (A).

§4-15-2 DEFINITIONS.

In this chapter:

(A) **ADVERSE ACTION** means a refusal to hire, a refusal to promote, or the revocation of an offer of employment or promotion.

- 38 (B) APPLICATION means a written or oral expression of interest in a job by an
39 individual made in compliance with the employer's established criteria for
40 receiving expressions of interest.
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- 42 (C) CONDITIONAL EMPLOYMENT OFFER means an oral or written offer by an
43 employer to employ an individual in a job that is conditioned solely on the
44 employer's evaluation of the individual's criminal history.
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- 46 (D) CRIMINAL HISTORY means an arrest, conviction, plea of nolo contendere, or
47 deferred adjudication arising from a felony criminal accusation, or a Class A or
48 Class B misdemeanor criminal accusation, made under state law, federal law, or a
49 comparable law of another state of the United States.
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- 51 (E) EMPLOYMENT means to work for an employer for pay. The term includes full
52 time work, part time work, temporary or seasonal work, contract work, casual or
53 contingent work, work through the services of a temporary or other employment
54 agency, and participation in a vocational, apprenticeship, or educational training
55 program.
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- 57 (F) EMPLOYER means a person, company, corporation, firm, labor organization, or
58 association that employs at least fifteen individuals whose primary work location is
59 in the City for each working day in each of 20 or more calendar weeks in the
60 current or preceding calendar year. The term includes an agency acting on behalf
61 of an employer. The term does not include:
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- 63 (1) the United States;
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 - 65 (2) a corporation wholly owned by the government of the United States;
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 - 67 (3) a bona fide private membership club (other than a labor organization) that is
68 exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
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 - 70 (4) the state or a state agency; or
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 - 72 (5) a political subdivision of the state.
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- 74 (G) JOB means an employment position with an employer for which the employer has
75 solicited or accepted applications and which the employer is currently attempting
76 to fill.
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78 **§4-15-3. APPLICABILITY.**

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- 80 (A) This chapter applies to an employer.
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- 82 (B) This chapter does not apply to a job for which a federal, state, or local law
83 disqualifies an individual based on criminal history.
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- 85 (C) Nothing in this chapter limits an employer's authority to withdraw a conditional
86 offer of employment for any lawful reason, including the determination that an
87 individual's criminal history bears a direct relation to the duties and
88 responsibilities of the job, and makes the individual unsuitable for the job.
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90 **§4-15-4. FAIR CHANCE HIRING PRACTICES.**

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- 92 (A) An employer may not publish or cause to be published information about a job
93 covered by this chapter that states or implies that an individual's criminal history
94 automatically disqualifies the individual from consideration for the job.
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- 96 (B) An employer may not solicit or otherwise inquire about the criminal history of an
97 individual in an application for a job covered by this chapter.
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- 99 (C) An employer may not solicit criminal history information about an individual or
100 consider an individual's criminal history unless the employer has first made a
101 conditional employment offer to the individual.
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- 103 (D) An employer may not refuse to consider employing an individual who submits an
104 application for a job because the individual did not provide criminal history
105 information before the individual received a conditional employment offer.
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- 107 (E) An employer may not take adverse action against an individual because of the
108 individual's criminal history unless the employer has determined that the
109 individual's criminal history bears a direct relation to the duties and
110 responsibilities of the job and makes the individual unsuitable for the job.
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- 112 (F) An employer who takes adverse action against an individual based on the
113 individual's criminal history must inform the individual in writing that the
114 adverse action was based on the individual's criminal history.
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118 **§4-15-5 RETALIATION PROHIBITED.**

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120 An employer may not take adverse action against an individual because the individual
121 has reported a violation of this chapter by an employer, or has participated in an
122 administrative proceeding under this chapter.
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124 **§4-15-11 ADMINISTRATION.**

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126 (A) The Equal Employment/Fair Housing Office shall:

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128 (1) educate employers and residents about this chapter;
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130 (2) receive and investigate complaints alleging a violation of this chapter;
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132 (3) enforce this chapter;
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134 (4) seek voluntary compliance with this chapter before assessing a civil penalty;
135 and
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137 (5) adopt rules necessary to implement this chapter.
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139 (B) To be considered by the Equal Employment/Fair Housing Office, a complaint
140 alleging a violation of this chapter must be filed with the Equal Employment/Fair
141 Housing Office no later than the 90th calendar day after the date of the alleged
142 violation.
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144 (C) If the Equal Employment/Fair Housing Office finds that a violation of this
145 ordinance has occurred, and voluntary compliance cannot be obtained, the Equal
146 Employment/Fair Housing Office may assess a civil penalty and provide notice
147 to the employer as provided in §4-15-13.
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149 **§4-15-12 INVESTIGATION OF COMPLAINTS.**

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151 (A) The director of the Equal Employment/Fair Housing Office may subpoena records
152 or testimony relevant to the investigation of a complaint under this chapter. A
153 subpoena shall:

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155 (1) be directed to a person with knowledge or information relevant to a
156 complaint under this chapter, or to a custodian of records relevant to a
157 complaint under this chapter;

- 158 (2) be in writing and signed by the director of the Equal Employment/Fair
159 Housing Office;
- 160 (3) identify the records or testimony to be produced under the subpoena;
- 161 (4) direct the person to whom it is issued to produce the records or provide the
162 testimony identified in the subpoena at a specific place and time, which shall
163 be not earlier than the 10th business day from the date of service of the
164 subpoena;
- 165 (5) identify the individual complaint made under this chapter to which the
166 subpoena relates;
- 167 (6) state that the subpoena is issued under the authority of this chapter for
168 purposes of investigating a complaint under this chapter;
- 169 (7) state that failure to comply with the subpoena is an offense and punishable
170 as a Class C misdemeanor under this Code; and
- 171 (8) be served on the person to whom it is directed by certified mail or personal
172 delivery.

173 (B) A person commits an offense if the person fails to comply with a subpoena issued
174 and served on the person as provided in subsection (A). The offense is punishable
175 as a Class C misdemeanor as provided in section 1-1-99 of this Code. A culpable
176 mental state is not a necessary element of the offense, or required to be proven for
177 the offense.

178 **§4-15-13 CIVIL PENALTY.**

- 179 (A) An employer who fails to cease a violation of this chapter by the end of the 10th
180 business day after the day the employer receives written notice of the violation
181 from the City is liable to the City for a civil penalty of \$100 for that violation.
- 182 (B) An employer who violates Section 4-15-4(A) or Section 4-15-4(B) of this chapter
183 is liable for no more than one civil penalty for each job to which the violation
184 relates.
- 185 (C) This section does not create a criminal offense.

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Part 2.

- (A) The Equal Employment/Fair Housing Office may not assess a civil penalty under section 4-15-12 for a violation of Chapter 4-15 that occurs before the second anniversary of the effective date of this ordinance.
- (B) For a violation of this chapter that occurs after the first anniversary of the effective date of this ordinance but before the second anniversary of the effective date of this ordinance, the Equal Employment/Fair Housing Office shall issue a written warning to the employer found to be in violation informing the employer that a civil penalty will be assessed for a violation that occurs after the second anniversary of the effective date of this ordinance.

Part 3. The council directs the city manager to design and provide a public education campaign to inform employers and residents of the requirements of Chapter 4-15.

Part 4. Except as provided in Part 2, this ordinance takes effect on March ____, 2016.

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_____, 2016

Steve Adler
Mayor

APPROVED: _____
Anne L. Morgan
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk