

ORDINANCE NO. _____

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.

41 (B) APPLICATION means a written or oral expression of interest in a job by an
42 individual made in compliance with the employer's established criteria for
43 receiving expressions of interest.

44
45 (C) CONDITIONAL EMPLOYMENT OFFER means an oral or written offer by an
46 employer to employ an individual in a job that is conditioned solely on the
47 employer's evaluation of the individual's criminal history, and may be conditioned
48 on any pre-employment medical examinations authorized under the Americans
49 with Disabilities Act (ADA).

50
51 (D) CRIMINAL HISTORY means an arrest, conviction, plea of nolo contendere, or
52 deferred adjudication arising from a felony criminal accusation, or a Class A or
53 Class B misdemeanor criminal accusation, made under state law, federal law, or a
54 comparable law of another state of the United States.

55
56 (E) EMPLOYMENT means to work for an employer for pay. The term includes full
57 time work, part time work, temporary or seasonal work, contract work, casual or
58 contingent work, work through the services of a temporary or other employment
59 agency, and participation in a vocational, apprenticeship, or educational training
60 program.

61
62 (F) EMPLOYER means a person, company, corporation, firm, labor organization, or
63 association that employs at least fifteen individuals whose primary work location is
64 in the City for each working day in each of 20 or more calendar weeks in the
65 current or preceding calendar year. The term includes an agency acting on behalf
66 of an employer. The term does not include:

- 67
68 (1) the United States;
69
70 (2) a corporation wholly owned by the government of the United States;
71
72 (3) a bona fide private membership club (other than a labor organization) that is
73 exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
74
75 (4) the state or a state agency; or
76
77 (5) a political subdivision of the state.
78

Comment [CG1]: Clarification

79 (G) INDIVIDUALIZED ASSESSMENT means an evaluation of the criminal history
80 of an individual that includes, at a minimum, the following factors:

- 81 (1) the nature and gravity of any offenses in the individual's criminal history;
82
83 (2) the length of time since the offense and completion of the sentence; and
84
85 (3) the nature and duties of the job for which the individual has applied.

Comment [CG2]: Amendment 1, Part 1

86
87
88 (H) JOB means an employment position with an employer for which the employer has
89 solicited or accepted applications and which the employer is currently attempting
90 to fill.

91
92 ~~(H)~~(I) —STAFFING AGENCY means an employer that:

- 93
94 (1) assigns individuals employed by it to perform work for another employer; and
95
96 (2) retains the obligation to pay such individuals for the work performed for the other
97 employer.

98
99 **§4-15-3. APPLICABILITY.**

- 100
101 (A) This chapter applies to an employer.
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103 (B) This chapter does not apply to a job for which a federal, state, or local law, or
104 compliance with legally mandated insurance or bond requirement disqualifies an
105 individual based on criminal history.
106
107 (C) Nothing in this chapter limits an employer's authority to withdraw a conditional
108 offer of employment for any lawful reason, including the determination that an
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~~
111 individual is unsuitable for the job based on an individualized assessment of the
112 individual's criminal history.

Comment [CG3]: Amendment 1, Part 2

113
114 **§4-15-4. FAIR CHANCE HIRING PRACTICES.**

- 115
116 (A) An employer may not publish or cause to be published information about a job
117 covered by this chapter that states or implies that an individual's criminal history
118 automatically disqualifies the individual from consideration for the job.

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120 (B) An employer may not solicit or otherwise inquire about the criminal history of an
121 individual in an application for a job covered by this chapter.

122
123 (C) An employer may not solicit criminal history information about an individual or
124 consider an individual's criminal history unless the employer has first made a
125 conditional employment offer to the individual. This does not preclude an
126 employer from explaining to applicants, in writing, the individualized assessment
127 system that the employer uses to consider criminal history.

Comment [CG4]: Amendment 2

128
129 (D) An employer may not refuse to consider employing an individual ~~who submits an~~
130 ~~application for in~~ a job covered by this chapter because the individual did not
131 provide criminal history information before the individual received a conditional
132 employment offer.

Comment [CG5]: Clarification

133
134 (E) An employer may not take adverse action against an individual because of the
135 individual's criminal history unless the employer has determined that ~~the~~
136 ~~individual's criminal history bears a direct relation to the duties and~~
137 ~~responsibilities of the job and makes the individual is unsuitable for the job based~~
138 on an individualized assessment conducted by the employer.

Comment [CG6]: Amendment 1, Part 3

139
140 (F) An employer who takes adverse action against an individual based on the
141 individual's criminal history must inform the individual in writing that the
142 adverse action was based on the individual's criminal history.

143
144 (F)(G) Notwithstanding any other part of this chapter, a staffing agency may solicit
145 criminal history information about an individual and make an individualized
146 assessment of an individual's criminal history when the staffing agency has
147 identified a job to which the individual will be employed.

148 149 §4-15-5 RETALIATION PROHIBITED.

150
151 An employer may not take adverse action against an individual because the individual
152 has reported a violation of this chapter by an employer, or has participated in an
153 administrative proceeding under this chapter.

154 155 §4-15-~~14~~6 ADMINISTRATION.

156
157 (A) The Equal Employment/Fair Housing Office shall:

- 159 (1) educate employers and residents about this chapter;
160
161 (2) receive and investigate complaints, including anonymous complaints,
162 alleging a violation of this chapter;
163
164 (3) enforce this chapter;
165
166 (4) seek voluntary compliance with this chapter before assessing a civil penalty;
167 and
168
169 (5) adopt rules necessary to implement this chapter.
170
171 (B) To be considered by the Equal Employment/Fair Housing Office, a complaint
172 alleging a violation of this chapter must be filed with the Equal Employment/Fair
173 Housing Office no later than the 90th calendar day after the individual receives
174 knowledge of the alleged violation, but in no event later than one year from the
175 date of the alleged violation.
176
177 (C) If the Equal Employment/Fair Housing Office finds that a violation of this
178 ordinance has occurred, and voluntary compliance cannot be obtained, the Equal
179 Employment/Fair Housing Office may assess a civil penalty and provide notice
180 to the employer as provided in §4-15-438.
181

Comment [CG7]: Clarification

Comment [CG8]: Amendment 3

182 **§4-15-742 INVESTIGATION OF COMPLAINTS.**
183

- 184 (A) The director of the Equal Employment/Fair Housing Office may subpoena records
185 or testimony relevant to the investigation of a complaint under this chapter. A
186 subpoena shall:
187
188 (1) be directed to a person with knowledge or information relevant to a
189 complaint under this chapter, or to a custodian of records relevant to a
190 complaint under this chapter;
191
192 (2) be in writing and signed by the director of the Equal Employment/Fair
193 Housing Office;
194
195 (3) identify the records or testimony to be produced under the subpoena;
196
197 (4) direct the person to whom it is issued to produce the records or provide the
198 testimony identified in the subpoena at a specific place and time, which shall

199 be not earlier than the 10th business day from the date of service of the
200 subpoena;

- 201
- 202 (5) identify the individual complaint made under this chapter to which the
203 subpoena relates;
- 204
- 205 (6) state that the subpoena is issued under the authority of this chapter for
206 purposes of investigating a complaint under this chapter;
- 207
- 208 (7) state that failure to comply with the subpoena is an offense and punishable
209 as a Class C misdemeanor under this Code; and
- 210
- 211 (8) be served on the person to whom it is directed by certified mail or personal
212 delivery.

- 213
- 214 (B) A person commits an offense if the person fails to comply with a subpoena issued
215 and served on the person as provided in subsection (A). The offense is
216 punishable as a Class C misdemeanor as provided in section 1-1-99 of this Code.
217 A culpable mental state is not a necessary element of the offense, or required to
218 be proven for the offense.

219

220 **§4-15-~~813~~ CIVIL PENALTY.**

- 221
- 222 (A) An employer who fails to cease a violation of this chapter by the end of the 10th
223 business day after the day the employer receives written notice of the violation
224 from the City is liable to the City for a civil penalty of ~~\$500~~ ^{up to \$500} ~~\$100~~ for that violation.
225 For a first-time violation, the City may instead issue a warning if the employer
226 attends an appropriate training session about compliance with this chapter.
- 227
- 228 (B) An employer who violates Section 4-15-4(A) or Section 4-15-4(B) of this chapter
229 is liable for no more than one civil penalty for each job to which the violation
230 relates.
- 231
- 232 (C) This section does not create a criminal offense.

233

234 ~~(A)~~ **Part 2.** The Equal Employment/Fair Housing Office may not assess a civil penalty
235 under section 4-15-~~128~~ for a violation of Chapter 4-15 that occurs before the first ~~second~~
236 anniversary of the effective date of this ordinance.

237

Comment [CG9]: Amendment 4

Comment [CG10]: Amendment 5, Part 1

238 **Part 3.** For a violation of Chapter 4-15 ~~this chapter~~ that occurs after the ~~first anniversary of~~
239 ~~the~~ effective date of this ordinance but before the ~~first-second~~ anniversary of the effective
240 date of this ordinance, the Equal Employment/Fair Housing Office shall issue a written
241 warning to the employer found to be in violation informing the employer that a civil penalty
242 ~~may will~~ be assessed for a violation that occurs after the ~~first-second~~ anniversary of the
243 effective date of this ordinance.

Comment [CG11]: Amendment 5, Part 2

244
245 **Part 4.** The council directs the city manager to design and provide a public education
246 campaign to inform employers and residents of the requirements of Chapter 4-15, including
247 a website with best practices for employers.

Comment [CG12]: Amendment 6

248
249 **Part 5.** Except as provided in Part 2, this ordinance takes effect on ~~February~~ __, 2015.
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