

IMPACT STATEMENT

Legislation title: Add Code Removing Barriers to Employment to establish procedures for the use of criminal history information by employers within the City (Ordinance; add Code Chapter 23.10)

Contact name: Josh Alpert

Contact phone: 503-823-3579

Presenter name: Judy Prosper, City Attorney Office

Purpose of proposed legislation and background information:

The purpose of this ordinance is to establish procedures for the timing and use of criminal history information by employers within the city of Portland, for the purpose of reducing the barriers to employment experienced by applicants with a criminal background.

Financial and budgetary impacts:

For the first year, there is an anticipated need of .75 FTE position, allocated in the FY 2015-2016 budget, to work on education, investigation, and enforcement. The city may require more code hearing services to accommodate the administrative enforcement, added over time.

Additionally, a budget allocation in the FY 2015-2016 of \$500,000 is needed for business and applicant education, as well as wrap around services for applicants with backgrounds.

Community impacts and community involvement:

This ordinance would impact business owners and current and ex-offenders within the city of Portland. As part of the research process, we have reached out to businesses, business organizations, labor organizations, the Urban League of Portland, and services providers who work directly with the affected population.

Budgetary Impact Worksheet

Does this action change appropriations?

☐ **YES:** Please complete the information below.

☒ **NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

SUMMARY OF MUNICIPAL ORDINANCES

City	San Francisco, CA	Seattle, WA	Buffalo, NY	Rochester, NY	Philadelphia, PA	Columbia, MO	Washington DC	Baltimore, MD	PROPOSED Portland, OR
Pop. (2013)	837,422	652,405	258,959	210,358	1,553 million	115,276	646,449	622,104	609,456
Effective Date	8/13/2014	11/1/2013	1/1/2014	11/18/2014	7/12/2011	12/1/2014	12/17/2014	8/13/2014	
Employees	20	1	15	4	10	1	11	10	6
When in the process is employer allowed to review criminal history	After first interview or upon conditional offer.	After applications are sorted for qualified candidates.	Not before first interview.	After "good faith interview".	May ask after first interview. May discuss voluntarily disclosed convictions. May obtain report upon conditional offer.	Conditional Offer	Conditional Offer	Conditional Offer	Conditional Offer
Administrative Agency	Office of Labor Standards Enforcement; Appeal allowed	Seattle Office of Civil Rights (exclusive)	Commission on Citizens' Rights and Community Relations	None	Mayor's Office of Labor & Standards; Philadelphia Commission of Human Rights (Exclusive)	Human Rights Commission (Exclusive)	Commission on Human Rights (Exclusive)	Community Relations Commission	TBD
Penalties	\$50-\$100	\$700-\$1000	\$500-\$1000	\$500-\$1000	\$2000 Per Violation	Misdemeanor \$1000/30 days	\$1000-\$5000	Misdemeanor \$500/90 Days	up to \$1000
Private Right	yes	No	Yes	Yes	No	No	No	Yes	No
Title	Fair Chance Ordinance	Use of Criminal History in Employment Decisions	Fair Employment Screening	Fair Employment Screening	Fair Criminal Record Screening Standards	Employment Opportunities for Qualified Applicants	Fair Criminal Record Screening Amendment Act of 2014	Fair Criminal Record Screening Practices	TBD

Moore-Love, Karla

From: Genevieve Martin <gmartin@daveskillerbread.com>
Sent: Thursday, March 26, 2015 10:39 AM
To: Hales, Mayor
Cc: Alpert, Josh; Moore-Love, Karla; Wiggins, Rachael
Subject: Ban the Box workgroup request

Dear Mayor Hales and City Commissioners –

Thank you for the opportunity to hear yesterday's discussion and testimony on the City's proposed "Ban the Box" ordinance to establish procedures for the use of criminal history information by Portland employers.

We heard mention during the hearing that there will be a workgroup convening to discuss the proposal's administrative rules, and Dave's Killer Bread would very much like to be included in that discussion. Please let us know when and where we might participate in the workgroup.

Thank you for all that you do for the City of Portland.
All the best,

Genevieve Martin
Community Development Manager
Executive Administrator, CEO
Dave's Killer Bread
5209 SE International Way
Milwaukie, OR 97222
Office: 503.335.8077 ext: 317

Agenda Item 319

TESTIMONY

3:00 pm

~~11:00 AM~~ TIME CERTAIN

NEW CODE: REMOVING BARRIERS TO EMPLOYMENT

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)

ADDRESS AND ZIP CODE

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POTENTIAL CITY-WIDE POLICY FOR REMOVING BARRIERS TO EMPLOYMENT
FOR INDIVIDUALS WITH CRIMINAL HISTORIES

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

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✓	Trudy Cooper	214 NE Thompson Portland 97212	teyuna56@hotmail.com
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RESEARCH FINDS FAIR CHANCE POLICIES SUPPORT FAMILIES AND COMMUNITIES, INCREASE PUBLIC SAFETY

NELP's conservative estimates indicate that roughly 70 million people in the United States have some sort of a criminal record¹ and nearly 700,000 people return to our communities from incarceration every year. Numerous research studies find that people require a combination of family support, community assistance, and economic opportunity to make different choices and stay out of the criminal justice system. Having access to employment opportunities is a critical component of this web of support. A steady job provides not just financial resources, but also connections to new people and behaviors and a motivation to remain out of incarceration.

Unfortunately, finding a job is all too difficult for many people with records, and the Great Recession made it even worse; for example, in Washington State, researchers found that before the Recession 40 percent of the formerly incarcerated were employed, but in 2008 the proportion had dropped to 10 percent.² While having a job—especially a low-wage job—is not a guarantee that a formerly incarcerated person will not reoffend, unemployment strains critical family supports and provides opportunities and motives to reengage in illegal behaviors. Thus, removing a barrier that cuts off employment opportunities before the hiring process even begins, is critical to designing a robust policy platform to help millions of Americans with criminal records reenter our communities.

Below is information on studies that offer research and data that support the proposition that removing unjust barriers to employment is good for individuals, families, and communities, increases public safety, and contributes to a robust economy. These studies may be useful as you incorporate fair chance into your campaign.

REMOVING JOB BARRIERS FOR PEOPLE WITH RECORDS HELPS THE ECONOMY

Economists estimated that because people with felony records and the formerly incarcerated have poor prospects in the labor market, the nation's gross domestic product in 2008 was reduced by \$57 to \$65 billion.³

- A 2011 study by the Economy League of Greater Philadelphia found that putting 100 formerly incarcerated persons back to work would increase their lifetime earnings by \$55 million, increase their income tax contributions by \$1.9 million, and boost sales tax revenues by \$770,000, all while saving more than \$2 million annually by keeping them out of the criminal justice system.⁴

- A Washington State analysis found that providing job training and employment to a formerly incarcerated person returned more than \$2,600 to taxpayers (2014 dollars).⁵
- By the time he has hit his peak earning years, a typical former inmate will have earned \$192,000 less in 2014 dollars than if he had never been incarcerated,⁶ with a commensurate decline in income taxes and a diminished ability for consumer activity with accompanying sales taxes.
- In a study of women released from prisons in Texas, 18 percent of respondents reported depending on public assistance even 8 to 10 months after release.⁷ Another study found that nearly one-fifth of heads of households relying on Temporary Assistance for Needy Families (TANF) had been convicted of a felony or arrested.⁸ These numbers don't fully reflect the need experienced by people with records and their families since some types of violations disqualify applicants for various types of publicly-funded supports.

EMPLOYING THE FORMERLY INCARCERATED IMPROVES PUBLIC SAFETY

- A 2011 study of the formerly incarcerated found that employment was the single most important influence on decreasing recidivism, and that two years after release nearly twice as many employed people with records had avoided another brush with the law than their unemployed counterparts.⁹
- A three-year recidivism study found that formerly incarcerated persons with one year of employment had a 16 percent recidivism rate over three years as compared to a 52.3 percent recidivism rate for all Department of Correction releases. Even just 30 days of employment lowered the three-year recidivism rate to 20 percent.¹⁰
- An examination of a national experimental public work program for the formerly incarcerated found that even marginal employment opportunities were effective in reducing illegal activity and arrest for those over 27 years of age.¹¹
- A study of state-level data concluded that a 1 percent drop in the unemployment rate causes a 2 percent decline in burglary, a 1.5 percent decrease in larceny, and a 1 percent decrease in auto theft.¹²

CHILDREN AND FAMILIES SUFFER WHEN PEOPLE WITH RECORDS CANNOT WORK

- In the year after an incarcerated father is released, family income drops by approximately 15 percent from what it was before incarceration.¹³

- Upward mobility for those with criminal records is significantly diminished; while one-third of men without a record in the lowest quintile of earners were still at that level 20 years later, more than two-thirds of men with records were stuck there.¹⁴
- One survey of family members of the formerly incarcerated found that 68 percent said those who were parents were having trouble paying child support, 43 percent were challenged in regaining custody of their children, and 26 percent experienced trouble rebuilding relationships with family.¹⁵
- Families of the formerly incarcerated often struggle to provide them with financial help. One study of women with felonies found that 65 percent relied on a family member or spouse for financial support.¹⁶
- Interviews with family members of formerly-incarcerated men found that 83 percent had provided the recently released family member with financial support, but that half those reported that this presented financial challenges for themselves and 30 percent went so far as to call these “financial hardships.”¹⁷

HOW DO FAIR CHANCE POLICIES HELP PEOPLE WITH RECORDS CONNECT TO THE LABOR MARKET?

EMPLOYERS REFUSE TO CONSIDER APPLICANTS WITH CRIMINAL RECORDS

- A study of help-wanted advertisements in Virginia found that of more than 192,000 total positions listed, just under 16,000 (or 8.23 percent) were open to hiring an applicant with a record.¹⁸
- Interviews with Boston-area employers found that employers were especially uncomfortable considering a recently released person with a record.¹⁹
- Other employer interviews indicated that while nearly all employers would “definitely” or “probably” hire applicants on public assistance, with lengthy unemployment spells, or other “stigmatizing characteristics,” only 40 percent would give the same consideration to applicants with criminal records.²⁰
- Studies have shown that if hiring discrimination takes place, it is most likely (76 percent) to take place at the first interaction: the submission of a job application. Applicants who indicate a criminal record on these applications are much less likely to get a call-back: 34 percent of whites without a record were contacted, while only 17 percent of those with a record did; and among African Americans 14 percent without a record got a callback, but only 5 percent one of African Americans with a criminal record heard back from the potential employer.²¹

PERSONAL CONTACT AND CONTEXT PUT A CRIMINAL RECORD IN PERSPECTIVE, GIVING APPLICANTS A FAIR CHANCE

- Studies show that time since release can itself be a predictor of subsequent criminal activity: one found that among those who did not reoffend in the first 10 years after release, only 3.3 percent were reconvicted in the next 10 years;²² another found that the number of formerly incarcerated people who returned to prison peaked at 10 months, and that the risk of re-offense halved every 10 months thereafter;²³ and a third found that 6 or 7 years after release, the risk for recidivism among those with criminal records was only marginally higher than among those who had never offended.²⁴
- A survey of California employers found that if they knew the nature of an offense, their willingness to consider hiring a worker varied significantly, with 23 percent willing to hire a person with a drug-related felony, and 84 percent willing to consider applicants with a misdemeanor offense, but a blanket prohibition on hiring those with a “criminal record” does not allow for this kind of qualitative assessment.²⁵
- In a study in which test pairs of potential workers, one with a criminal record and one without, applied for jobs researchers found that having personal contact with the potential employer reduced the negative effect of a criminal record by approximately 15 percent.²⁶
- In a study released in 2014 of how hiring managers consider job applicants with criminal records, one of the central themes of the employers’ accounts of hiring was that applicants can compensate for their criminal records based on their personality and ability to make in-person contact with hiring authorities.²⁷

EMPLOYERS WHO HAVE GIVEN WORKERS WITH A CRIMINAL RECORD A CHANCE OFTEN FIND THEM TO BE VALUED EMPLOYEES

- One study of former prisoners found that 8 months after release, 80 percent of employed respondents said that their employers knew about their criminal record but that they were satisfied with their work and their wages.²⁸
- The Human Resources Director for Austin, TX, endorses their Ban the Box policy. “We don’t hire people because they [have records], we hire people because they’re the most qualified...There is a social responsibility for Government to help enable that benefit for the community...There are extremely talented and qualified people who happen to [have records]...They are just as productive as people who do not have criminal records.”²⁹
- “In my experience, people with criminal records are often model employees. They are frequently the most dedicated and conscientious. A lot of doors are shut to them, so when

someone gives them an opportunity, they make the most of it." Brad Friedlander, CEO Red Restaurant Group.³⁰

- In focus groups conducted by the U.S. Department of Labor's Center for Faith-Based and community Initiatives in 2002, employers of people with criminal records said: "One of the [people with records] we hired is now a store manager, and another is an assistant manager. Each has excellent management skills and both are great mentors to other [people with records] we've hired"; and, "There are many misconceptions out there about [people with records]. We try to look beyond that label and consider each person on his or her merits—on a case-by-case basis."³¹
- Terri Jackson, head of a telecommunications company in Denver, CO, has said, "Of all the groups we targeted, [people with records] turned out to be the best employees, in part because they usually have a desire to create a better life for themselves...They are often highly motivated and many have usable job skills that are desirable for an employer. They come to work every day and do not engage in the type of behaviors that will land them back in the penal system."³²
- Mark Chippendale, a former manufacturing executive and current Rhode Island state representative, "In my experience, a lot of times these folks actually make exemplary employees because they work harder and they have something to prove in a way, or that's how they feel."³³
- "I believe our society should do more to support positive initiatives to encourage the rehabilitation of prisoners. We should create more chances for people who have been in jail to make a positive contribution to the workforce," Richard Branson, founder of Virgin Airlines and Virgin Group, a consortium comprised of more than 400 companies worldwide.³⁴
- Joey Turner, owner of Brewed, a coffeehouse in Fort Worth, TX, says of his employees with criminal records: "It's not just a job for them—it's their life. It's the on-ramp for them to get back into society. They have inspired our staff because they are so serious."³⁵
- "Numerous studies prove that a job is the key ingredient in the recipe for stronger communities and reducing recidivism. Our role is to create those job opportunities and at a fair, living wage." Gregg Keeling, President RecycleForce.³⁶
- Evolv, a company that evaluates large amounts of human resources statistics to help companies profile successful employees, has found that "employees with criminal backgrounds are 1 to 1.5 percent more productive on the job than people without criminal records."³⁷

FAIR CHANCE POLICIES ALLOW PEOPLE WITH CRIMINAL RECORDS TO GET HIRED

- After the City of Minneapolis implemented its policy, they found that removing the criminal disclosure box from initial applications and postponing background checks until a conditional offer of employment was made decreased the amount of transactional work for City staff, did not slow down the hiring process, and resulted in more than half of applicants with convictions being hired.³⁸
- As a result of its new criminal disclosure policy, 10 percent of the City of Atlanta's hires between March and October of 2013 were people with records.³⁹
- In Durham County, North Carolina, the number of applicants with criminal records recommended for hire has nearly tripled in the two years since its "ban the box" policy passed, with the resulting number of hires increasing from 35 to 97. On average, 96.8 percent of those with records recommended for hire ultimately get the job.⁴⁰

ⁱ In 2012, there were an estimated 100,596,300 subjects ("individual offenders") in the state criminal history files within the fifty states, American Samoa, Guam and Puerto Rico. U.S. Dept. of Justice, Bureau of Justice Statistics, *Survey of State Criminal History Information Systems, 2012* (Jan. 2014) at p.2 (<https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>) To account for duplication (individuals who may have criminal records in more than one state), NELP conservatively reduced the numbers cited in the survey by 30% to 70,417,410 subjects. The U.S. Census 2012 population estimate for those that are 18 years and over was 240,185,952. *Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States: April 1, 2010 to July 1, 2012*, U.S. Census Bureau, Population Division (June 2013). (www.census.gov) Using these estimates, there are 70 million U.S. adults or almost one in three U.S. adults (29%) with a criminal history in the U.S. state criminal history files.

² "Educational Attainment, Employment and Incarceration, Part 2," Seattle, WA: Seattle Jobs Initiative, 2012. (http://www.seattlejobsinitiative.com/wp-content/uploads/BeyondHeadlines_MAR2012.pdf)

³ John Schmitt and Kris Warner, "Ex-offenders and the Labor Market," Washington, D.C.: Center for Economic and Policy Research, 2010. (<http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>)

⁴ "Economic Benefits of Employing Formerly Incarcerated Individuals in Philadelphia," Philadelphia, PA: Economy League of Greater Philadelphia, 2011. (http://economyleague.org/files/ExOffenders_Full_Report_FINAL_revised.pdf)

⁵ Elizabeth K. Drake, Steve Aos, and Marna G. Miller, "Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State," *Victims and Offenders* (4), 2009: 170-196. (http://ilvoicescom.ipage.com/uploads/2/8/6/6/2866695/evidence_based_reasearch_for_public_policy.pdf)

⁶ Bruce Western and Becky Pettit, "Collateral Costs: Incarceration's Effect on Economic Mobility," Washington, D.C.: The Pew Charitable Trusts, 2010. (http://www.pewtrusts.org/uploadedFiles/Collateral_Costs.pdf?n=8653)

⁷ Nancy G. La Vigne, Lisa E. Brooks, and Tracey L. Shollenberger, "Women on the Outside: Understanding the Experiences of Female Prisoners Returning to Houston, Texas," Washington, D.C.: Urban Institute, 2009. (http://www.urban.org/UploadedPDF/411902_women_outside_houston.pdf)

⁸ Gretchen Kirby, Thomas Fraker, LaDonna Pavetti, and Martha Kovac, "Families on TANF in Illinois: Employment Assets and Liabilities," Washington, D.C.: Mathematica Policy Research, Inc., 2003. (<http://aspe.hhs.gov/hsp/tanf-il-emp03/report.pdf>)

⁹ Mark T. Berg and Beth M. Huebner, "Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism," *Justice Quarterly* (28), 2011: 382-410. (<http://www.tandfonline.com/doi/abs/10.1080/07418825.2010.498383?journalCode=rjqy20#preview>)

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- ¹⁰ "Safer Foundation Three-Year Recidivism Study, 2008," Chicago, IL: 2008.
(<http://saferfoundation.org/files/documents/Safer%20Recidivism%20Study%202008%20Summary.pdf>)
- ¹¹ Christopher Uggen, "Work as a Turning Point in the Life Course of Criminals: a Duration Model of Age, Employment, and Recidivism," *American Sociological Review* (67), 2000: 529-546.
(http://www.socsci.umn.edu/~uggen/Uggen_asr_00.pdf)
- ¹² Steven Raphael and Rudolf Winter-Ebmer, "Identifying the Effect of Unemployment on Crime," *The Journal of Law and Economics (University of Chicago Law School)* (44), 2001: no page numbers available.
(<http://www.jstor.org/stable/10.1086/320275>)
- ¹³ Western and Pettit, 2010.
- ¹⁴ Ibid.
- ¹⁵ Tracey Shollenberger, "When Relatives Return: Interviews with Family Members of Returning Prisoners in Houston, Texas," Washington, D.C.: Urban Institute, 2009.
(http://www.urban.org/UploadedPDF/411903_when_relatives_return.pdf)
- ¹⁶ La Vigne, 2009.
- ¹⁷ Rebecca L. Naser and Christy A. Visher, "Family Members' Experiences with Incarceration and Reentry," *Western Criminology Review* 7(2), 2006: 20-31. (<http://wcr.sonoma.edu/v07n2/20-naser/naser.pdf>)
- ¹⁸ Eric Lichtenberger, "Where do Ex-Offenders Find Jobs? An Industrial Profile of the Employers of Ex-Offenders in Virginia," *Journal of Correctional Education* 57(4), 2006: 297-311.
(<http://www.jstor.org/discover/10.2307/23282804?uid=3739856&uid=2129&uid=2134&uid=2&uid=70&uid=4&uid=3739256&sid=21103716568513>)
- ¹⁹ Jennifer Fahey, Cheryl Roberts, and Len Engel, "Employment of Ex-Offenders: Employer Perspectives," Boston, Massachusetts: Crime & Justice Institute, 2006. (http://208.109.185.81/files/ex_offenders_employers_12-15-06.pdf)
- ²⁰ Harry J. Holzer, "Collateral Costs: The Effects of Incarceration on the Employment and Earnings of Young Workers," Bonn, Germany: IZA Discussion Paper No. 3118, 2007. (<http://ftp.iza.org/dp3118.pdf>)
- ²¹ Devah Pager, "The Mark of a Criminal Record," *American Journal of Sociology* 108(5), 2003: 937-975.
(http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf)
- ²² Alfred Blumstein and Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks," *Criminology* 47(2), 2009: 327-359.
(http://www.search.org/files/pdf/Redemption_Blumstein_Nakamura_2009Criminology.pdf)
- ²³ Shawn D. Bushway and Gary Sweeten, "Abolish Lifetime Bans for Ex-Felons," *Criminology and Public Policy* 6(4), 2007: 697-706. (<http://www.reentryaftercare.org/pdf/Bushway%20-%20Abolish%20Lifetime%20Bans%5B1%5D.pdf>)
- ²⁴ Megan C. Kurlychek, Robert Brame, and Shawn Bushway, "Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?" *Criminology and Public Policy* 5(3), 2006: 483-504.
(<http://www.ijay.cuny.edu/ScarletLetter.pdf>)
- ²⁵ Fahey, Roberts, and Engel, 2006.
- ²⁶ Devah Pager, "Sequencing Disadvantage: The Effects of Race and Criminal Background for Low-Wage Job Seekers," Statement to the U.S. Equal Employment Opportunity Commission, convened November 20, 2008.
(<http://www.eeoc.gov/eeoc/meetings/11-20-08/pager.cfm>)
- ²⁷ Sarah Lageson, Mike Vuolo, and Chris Uggen, "Legal Ambiguity in Managerial Assessments of Criminal Records," *Law & Social Inquiry*, 2014. (<http://onlinelibrary.wiley.com/doi/10.1111/lsi.12066/abstract>)
- ²⁸ Christy Visher, Sara Debus, and Jennifer Yahner, "Employment after Prison: A Longitudinal Study of Releasees in Three States," Washington, D.C.: Urban Institute, 2008.
(http://www.urban.org/UploadedPDF/411778_employment_after_prison.pdf)
- ²⁹ Quoted in Eric Krell, "Consider the risks—and rewards—of hiring ex-offenders," *HR Magazine* 57(2), 2012: no page numbers available.
(<http://www.shrm.org/publications/hrmagazine/editorialcontent/2012/0212/pages/0212krell.aspx>)
- ³⁰ Brad Friedlander, "Give criminals another employment shot," *Crain's Cleveland Business*, May 21, 2012.
(<http://www.craincleveland.com/article/20120521/SUB1/305219985&template=mobile#ATHS>)

³¹ "Ready 4 Work: Business Perspectives on Ex-Offender Reentry," Washington, D.C.: Center for Faith-Based and Community Initiatives, U.S. Department of Labor, 2002.

(http://www.doleta.gov/rexo/pdf/R4W_Business_Perspectives_Ex_offender_reentry.pdf)

³² Quoted in "Ex-Offenders in Employment: Issues Surrounding Ex-Offender Hiring Practices in Iowa," Des Moines, IA: Iowa Civil Rights Commission, undated.

(<http://www.iowa.gov/government/crc/docs/ExOffendersinEmployment2009.pdf>)

³³ Quoted in Suzy Khimm, "States push to provide some ex-felons a second chance," MSNBC, July 21, 2013.

(<http://www.msnbc.com/all-in/states-push-provide-some-ex-felons-second>)

³⁴ Richard Branson, "Employing more ex-offenders," Undated open letter posted on Virgin's webpage, accessed March 11, 2014. (<http://www.virgin.com/richard-branson/employing-more-ex-offenders>)

³⁵ Quoted in Shelley Kofler, "In Tarrant County, Program Helps Turn Former Prisoners into Eager Employees," KERA News, January 4, 2014. (<http://keranews.org/post/tarrant-county-program-helps-turn-former-prisoners-eager-employees>)

³⁶ Quoted in "RecycleForce Answers Obama's Call, Offers Ex-Offenders Minimum Wage of \$10.10," Care2 Website, February 26, 2014. (<http://www.care2.com/causes/recycleforce-answers-obamas-call-offers-ex-offenders-minimum-wage-of-10-10.html>)

³⁷ Inside the Wacky World of Weird Data: What's Getting Crunched, <http://www.cnbc.com/id/101410448>

³⁸ Materials on file with the National Employment Law Project.

³⁹ Materials on file with the National Employment Law Project.

⁴⁰ Daryl Atkinson & Kathleen Lockwood, "The Benefits of Ban the Box: A Case Study of Durham, NC," The Southern Coalition for Social Justice, Oct. 2014 (http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf)

Exhibit A

CHAPTER 23.10

REMOVING BARRIERS TO EMPLOYMENT

Sections:

23.10.010	Purpose.
23.10.020	Definitions.
23.10.030	Use of Criminal History in Employment Decisions.
23.10.040	Exceptions.
23.10.050	Required Process When Employer Makes Adverse Employment Decision.
23.10.060	Data Collection.
23.10.070	Enforcement.
23.10.080	Limitation of Action.
23.10.090	Administrative Rules Implementing this Chapter.
23.10.100	Confidentiality and Nondisclosure.
23.10.110	Public Education and Outreach.
23.10.120	Severability.
23.10.130	Application.

23.10.010 Purpose.

The purpose of this Chapter is: to remove barriers to employment so that people with criminal histories can provide for themselves and their families; to reduce disparate impacts on people of color that result from the use of criminal history information in hiring and employment decisions; and to reduce recidivism through the reintroduction of formerly incarcerated persons into community life.

23.10.020 Definitions.

For purposes of this Chapter, the following definitions apply:

- A.** “City” means the City of Portland as defined in Title 1 of the Code of the City of Portland.
- B.** “Employer” means any person or entity who employs another person within the city of Portland but does not include:

 - 1.** The United States Government;
 - 2.** The State of Oregon and any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;
 - 3.** Any political subdivision of the State of Oregon or any county, city, district, authority, public corporation or public entity other than the City of Portland; or
 - 4.** Employers with fewer than six employees.

Exhibit A

- C.** “Employment” means any occupation, vocation, job or work, including temporary or seasonal, contracted work, contingent work, and work through the services of a temporary or other employment agency, or any form of vocational or educational training, with or without pay.
- D.** “Conditional Offer” means any offer of Employment that is conditioned solely on:
 - 1.** The results of an Employer’s inquiry into or gathering of information about a person’s arrest or conviction history; and/or
 - 2.** Some other contingency expressly communicated to the applicant at the time of the offer.
- E.** “Adverse Employment Decision” means to discharge a person, or decline to hire or promote a person, or to revoke a person’s Conditional Offer of Employment.

23.10.030 Use of Criminal History in Employment Decisions.

- A.** It shall be an unlawful employment practice for an Employer to make an Adverse Employment Decision based upon a person’s criminal history except as otherwise provided in this Chapter.
- B.** An Employer may consider a person’s criminal history in the hiring process only after making a Conditional Offer of Employment. An Employer violates this Chapter if an Employer accesses or inquiries into a person’s criminal history prior to making a Conditional Offer of Employment.
- C.** An Employer may rescind a Conditional Offer of Employment or take another Adverse Employment Action based upon a person’s criminal history if an Employer determines in good faith that a specific offense or conduct has a direct relationship to a person’s ability to perform the duties or responsibilities of the Employment.
- D.** In making the determination of whether a person’s criminal history has a direct relationship to the person’s ability to perform the duties or responsibilities of the Employment, an Employer must conduct an individualized assessment of:
 - 1.** The nature and gravity of the offense;
 - 2.** The time that has elapsed since the offense took place; and
 - 3.** The nature of the Employment held or sought.

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- E.** In making the determination of whether a person's criminal history has a direct relationship to the person's ability to perform the duties or responsibilities of the Employment, an Employer must not consider:
1. An arrest not leading to a conviction, except where a crime is unresolved or charges are pending against a person;
 2. Convictions that have been judicially voided or expunged; or
 3. Charges that have been resolved through the completion of a diversion or deferral of judgment program.

23.10.040 Exceptions.

- A.** If a person voluntarily discloses during an interview that he or she has a criminal history, an Employer may engage in a discussion concerning the information that is voluntarily disclosed, but must still conduct an individualized assessment utilizing the factors set forth in subsection 23.10.030 D to determine whether or not the person's criminal history has a direct relationship to the person's ability to perform the duties or responsibilities of the Employment sought.
- B.** The prohibitions in this Chapter do not apply where a federal, state or local law or regulation requires or authorizes the consideration of a person's criminal history, including but not limited to:
1. Employment with law enforcement or in the criminal justice system;
 2. Private security employment, where a license is required by the Oregon Department of Safety Standards and Training;
 3. Employment involving direct access to or the provision of services to children, the elderly, persons with disabilities, persons with a mental illness, or individuals with alcohol or drug dependence or substance abuse disorders; and
 4. Employment requiring that the Employee be licensed, registered, certified or otherwise authorized to practice a profession or trade in this state.
- C.** The prohibitions in this Chapter do not apply to any position designated by the Employer as part of a federal, state or local government program designed to encourage the employment of those with criminal histories.

Exhibit A

23.10.050 Required Process When Employer Makes Adverse Employment Decision.

- A.** If, after conducting an individualized assessment of a person's criminal history as provided in Section 23.10.030, an Employer determines in good faith that a specific offense or conduct has a direct relationship to the person's ability to perform the duties or responsibilities of the Employment, the Employer shall provide a Written Notice of Adverse Employment Decision to the person. The Notice may be hand delivered, emailed or mailed by U.S. mail and shall:
1. Include a written copy of the criminal history report used to make the Adverse Employment Decision, if any, with information on its source;
 2. Describe the person's right to request reconsideration, based on any mitigating factors and to proffer evidence of rehabilitation, within two business days after the Employer provides notice of the Adverse Employment Decision; and
 3. Notify the person of the right to file an administrative complaint with the City of Portland and the time limit for doing so.
- B.** If the person requests reconsideration in a timely manner, Employer shall have two business days to reconsider the Adverse Employment Decision, and shall conduct an individualized assessment of all relevant evidence offered by the person, including, but not limited to:
1. The facts or circumstances surrounding the offense or conduct;
 2. The number of offenses for which the person was convicted;
 3. The person's age at the time of conviction, or release from prison;
 4. That the person performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
 5. The length and consistency of employment history before and after the offense or conduct;
 6. The person's successful participation in rehabilitation efforts, such as education, training or substance abuse treatment;
 7. Employment or character references and any other information regarding the person's fitness for the particular position; and/or

Exhibit A

8. Whether the person is bonded under a federal, state, or local bonding program.
- C. Unless the Employer reaches a different decision upon reconsideration, the Adverse Employment Decision shall be final four business days after the Employer provides the initial Notice of Adverse Employment Decision.

23.10.060 Data Collection.

The Employer shall maintain all records pertaining to Adverse Employment Decisions made after a review of criminal histories for 1 year.

23.10.070 Enforcement.

Action by the City.

- A. The City Attorney shall establish a process by Administrative Rule for accepting complaints alleging violations of this Code.
- B. Upon receipt of such a complaint, the City may investigate, and where it appears based on the facts that a violation may have occurred, the City may issue a written notice to the Employer containing the following:
 1. A reference to this Section, describing the violations that are alleged to have occurred;
 2. The date of the occurrence, and the street address or location of the Employer;
 3. A concise statement of the violations asserted; and
 4. A request that the Employer provide a written response to the City within 10 business days.
- C. Upon receipt of the Employer's written response, the City may conduct conciliation efforts to remediate such violations. If remediation is not possible, or if Employer fails to provide a written response, or if the written response provided fails to reasonably satisfy the City regarding the alleged violations, the City may file a complaint with the Code Hearings Officer, as provided under Section 22.03.020, for violations of this Section. The Code Hearings Officer shall schedule a hearing to determine whether to impose civil penalties.
- D. In determining the amount of the civil penalty to be imposed for violations of the provisions of this Chapter, the Code Hearings Officer shall consider:

Exhibit A

1. The extent and nature of the violation;
 2. Whether the violations were isolated, temporary, repeated or continuous;
 3. The magnitude and seriousness of the violation;
 4. The City's costs of investigating the violations and correcting or attempting to correct the violation; and
- E. Any other applicable facts bearing on the nature and seriousness of the violation.
- F. Civil penalties shall not exceed \$1,000 for each violation committed as provided in this Section.

23.10.080 Limitation of Action.

The City must file a complaint with the Code Hearings Officer within 6 months of learning of the alleged violation of this section.

23.10.090 Administrative Rules Implementing this Chapter.

- A. The City Attorney is hereby authorized to adopt rules, procedures and forms to assist in the implementation of the provisions of this Chapter.
- B. Any rule adopted pursuant to this section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full text of the proposed rules may be obtained.
- C. During the public review, a designee of the City Attorney shall hear testimony or receive written comment concerning the proposed rules. The City Attorney shall review the recommendation of his or her designee, taking into consideration the comments received during the public review process, and shall either adopt the proposal, modify it or reject it. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the hearing at which the original comments are received.
- D. Unless otherwise stated, all rules shall be effective upon adoption by the City Attorney and shall be filed in the office of the City Auditor as binding City policy.

Exhibit A

- E.** Notwithstanding paragraphs B and C of this Section, an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties. The finding shall state the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of no longer than 180 days.

23.10.100 Confidentiality and Nondisclosure.

Any criminal history information obtained by an Employer shall remain confidential except where disclosure is required by law.

23.10.110 Public Education and Outreach.

The City shall develop and implement an outreach program to inform Employers and members of the public about the terms of this Chapter.

23.10.120 Severability.

If a provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect the other provisions or application of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

23.10.130 Application.

This Chapter is effective _____.

**REFERRED TO COMMISSIONER OF
FINANCE AND ADMINISTRATION**

ORDINANCE No.

Add Code Removing Barriers to Employment to establish procedures for the use of criminal history information by employers within the City (Ordinance; add Code Chapter 23.10)

The City of Portland ordains:

Section 1. The Council finds:

1. Studies show that removing job barriers for people with criminal records helps the economy. Putting formerly incarcerated people back to work increases their lifetime earnings and tax contributions and saves public funds by reducing recidivism.
2. Employing the formerly incarcerated also improves public safety. Employment has been shown to be a major factor in reducing further illegal activity by those who have served time.
3. Children and families suffer when people with criminal histories cannot work. Upward mobility for those with criminal records is significantly diminished. Family members often struggle to provide the recently released with financial support, resulting in financial challenges or hardships to themselves. Many formerly incarcerated parents have trouble paying child support.
4. Many employers refuse to consider any applicants with criminal records. Many help-wanted advertisements disqualify those with criminal records. Routine criminal background checks by employers have increased dramatically in recent years.
5. Barriers to employment based on arrest and conviction disproportionately affect historically disadvantaged communities and communities of color.
6. Studies show that personal contact and context can put a criminal record in perspective and give applicants with criminal histories a fair chance at employment. Many employers who conduct a qualitative assessment are willing to consider applicants with certain criminal convictions who would be screened out by a blanket prohibition on hiring those with a criminal record. Having personal contact with potential employers has been shown to measurably reduce the negative effect of a criminal record. It has been shown that in many instances, applicants can compensate for their criminal records based on their personality, qualifications and ability to make in-person contact with hiring authorities.
7. Many people with criminal records can be valuable employees. Employers who have hired people with records often find that they are excellent employees who are highly motivated to create better lives for themselves. Employers have noted that such employees work harder because they feel have something to prove and are appreciative of the opportunity afforded them.

8. While blanket exclusions of all persons with criminal histories from consideration for employment are harmful, employers do need the ability to determine whether a particular applicant's criminal history is disqualifying for a particular job. An employer who makes an individualized assessment of a person's criminal history and determines in good faith that it has a direct relationship to the person's ability to perform the duties of a particular job is entitled to decline to hire that person for that job.

NOW THEREFORE, the Council Directs:

- a. That it is in the public interest to remove barriers to employment by establishing required procedures for the use of criminal history information by employers within the City of Portland as described in Code Chapter 23.10 attached as Exhibit A;
- b. That Administrative Rules, to include a City complaint procedure, governing the implementation of this Code shall be adopted by the City Attorney as described in Exhibit A; and
- c. That the Code Hearings Office is authorized to hear and determine complaints of violations of this Code and to assess penalties as provided in Exhibit A.

Passed by Council:

Mayor Charlie Hales

Prepared by: Judy S. Prosper

Date Prepared: March 18, 2015

Mary Hull-Caballero

Auditor of the City of Portland

By

Deputy

= 7319 =

✓140

Agenda No.
ORDINANCE
Title

Add Code Removing Barriers to Employment to establish procedures for the use of criminal history information by employers within the City (Ordinance; add Code Chapter 23.10)

<p>INTRODUCED BY Commissioner/Auditor: Mayor Hales</p>	<p>CLERK USE: DATE FILED <u>MAR 20 2015</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - <i>304</i> Hales</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p> <p>BUREAU APPROVAL</p> <p>Bureau: Mayor's Office</p> <p>Prepared by: Rachael Wiggins Date Prepared: 3/19/2015</p> <p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>✓ City Auditor Office Approval: required for Code Ordinances <i>Toni</i></p> <p>✓ City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan <i>[Signature]</i></p> <p>Council Meeting Date March 25, 2015</p>	<p style="text-align: right;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p> <p>ACTION TAKEN:</p> <p>MAR 25 2015 CONTINUED TO <i>Date to be announced</i></p> <p><i>CLERK NOTE: REFERRED TO COMMISSIONER OF FINANCE & ADMINISTRATION NEW ORDINANCE INTRODUCED 11-18-15</i></p>

AGENDA
<p>TIME CERTAIN <input checked="" type="checkbox"/></p> <p>Start time: <u>3:00 pm</u></p> <p>Total amount of time needed: 2 hour (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Fish	2. Fish		
3. Saltzman	3. Saltzman		
4. Novick	4. Novick		
Hales	Hales		