

PRESENTATION ON PROGRESS OF CITYWIDE
POLICY INITIATIVE TO ELIMINATE BARRIERS
TO EMPLOYMENT FOR PEOPLE WITH
CRIMINAL HISTORIES

BEFORE PORTLAND CITY COUNCIL
MARCH 11, 2015





Location	Employers:			Background checks only for some positions	Background check only after conditional offer or finalists selected	EEOC criteria
	Private	Vendors	Public			
ARIZONA						
1. Tucson			X	X		
2. CALIFORNIA (State law)			X			
3. Alameda County			X			
4. Berkeley			X	X		X
5. Carson			X			
6. Compton		X	X			X
7. East Palo Alto			X			
8. Oakland			X	X	X	X
9. Pasadena			X			
10. Richmond		X	X	X		
11. San Francisco	X ¹	X ¹	X		X	X
12. Santa Clara County			X			
13. COLORADO (State law)			X			X
14. CONNECTICUT (State law)			X			X
15. Bridgeport			X			X
16. Hartford		X	X	X	X	X
17. New Haven		X	X		X	X
18. Norwich			X		X	

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19. DELAWARE (State law)			X			X
20. New Castle County			X			
21. Wilmington			X		X	
FLORIDA						
22. Clearwater			X			X
23. Jacksonville			X		X	X
24. Pompano Beach			X			
25. St. Petersburg			X			
26. Tampa			X		X	
27. Tallahassee			X			X
28. GEORGIA (State policy)			X			
29. Atlanta			X			
30. Fulton County			X	X		X
31. Macon-Bibb County			X			
32. HAWAII (State law)	X	X	X		X	X
33. ILLINOIS (State law)	X	X	X			
34. Chicago	X	X	X		X	X

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INDIANA						
35. Indianapolis		X	X			X
KANSAS						
36. Kansas City			X			X
KENTUCKY						
37. Louisville		X	X			X
LOUISIANA						
38. New Orleans			X	X		
39. MARYLAND (State law)			X			
40. Baltimore	X	X	X	X	X	X
41. Montgomery County	X	X	X			
42. Prince George's County	X	X	X			X
43. MASSACHUSETTS (State law)	X	X	X			
44. Boston		X	X	X		
45. Cambridge		X	X			X
46. Worcester		X	X	X		X

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MICHIGAN						
47. Ann Arbor			X		X	X
48. Detroit		X	X			
49. East Lansing			X			
50. Genesee County			X		X	
51. Kalamazoo			X			
52. Muskegon County			X			
53. MINNESOTA (State law)	X	X	X		X	X ²
54. Minneapolis			X	X		X
55. St. Paul			X	X		X
MISSOURI						
56. Columbia	X	X	X		X	
57. Kansas City			X		X	X
58. St. Louis			X	X		
59. NEBRASKA (State law)			X			
60. NEW JERSEY (State law)	X	X	X			
61. Atlantic City		X	X		X	X
62. Newark	X	X	X	X	X	X
63. NEW MEXICO (State law)			X			X

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NEW YORK						
64. Buffalo	X	X	X		X	
65. New York		X ³	X			
66. Rochester	X	X	X		X	
67. Syracuse		X	X		X	X
68. Ulster County			X			
69. Yonkers			X			
NORTH CAROLINA						
70. Carrboro			X			X
71. Charlotte			X			
72. Cumberland County				X		
73. Durham City				X		X
74. Durham County				X		X
75. Spring Lake				X		
OHIO						
76. Akron			X			X
77. Canton			X		X	X
78. Cincinnati			X			X
79. Cleveland			X			
80. Cuyahoga County			X		X	X
81. Dayton			X			X
82. Hamilton County			X			
83. Massillon			X			X
84. Summit County			X	X		X

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OREGON						
86. Multnomah County			X			X
87. Portland			X			
PENNSYLVANIA						
88. Allegheny County			X	X	X	X
89. Lancaster			X		X	X
90. Philadelphia	X	X	X		X	
91. Pittsburgh		X	X		X	
92. RHODE ISLAND (State law)	X	X	X			
93. Providence			X			
TENNESSEE						
94. Hamilton County						
95. Memphis			X			X

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TEXAS						
96. Austin			X	X		
97. Travis County			X	X	X	X
VIRGINIA						
98. Alexandria			X		X	
99. Arlington County			X			
100. Charlottesville			X			
101. Danville			X		X	X
102. Fairfax County			X		X	
103. Fredericksburg			X		X	X
104. Newport News			X			X
105. Norfolk			X			X
106. Petersburg			X			
107. Portsmouth			X			
108. Richmond			X			
109. Roanoke			X			
110. Virginia Beach			X		X	X
WASHINGTON						
111. Seattle	X	X	X	X		
112. Spokane			X			
113. Washington D.C.	X	X	X		X	X
WISCONSIN						
114. Dane County			X			
115. Milwaukee County			X			

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	
Min. 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	Yes
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

**HIGHLIGHTS OF PROPOSED POLICY
TO REMOVE BARRIERS FOR EMPLOYMENT FOR
PEOPLE WITH CRIMINAL HISTORIES**

ADVERTISEMENT & APPLICATION

Employers would be encouraged to remove the “box” on their employment applications, whether they be in paper form or online.

While this proposed policy would not impose a ban on the question of whether a person has a criminal history, in assessing whether an employer violated the policy, the presence of the “box” could be evidence that criminal history was improperly considered before a conditional offer of employment was extended.

EMPLOYER COULD ONLY CONSIDER THE CRIMINAL HISTORY OF A PERSON AFTER MAKING CONDITIONAL OFFER OF EMPLOYMENT

“Conditional Offer” means any offer of Employment that is conditioned solely on:

- the results of an employer’s inquiry into or gathering of information about a person’s arrest or conviction history; and/or
- some other contingency expressly communicated to the applicant at the time of the offer;
- Example: drug test
 skills test

INDIVIDUALIZED ASESMENT

After extending a conditional offer of employment, an employer could inquire into a person's criminal history, either by asking them or obtaining a criminal history report. An employer would then be required to make an **individualized assessment** to determine whether a specific offense has a **direct relationship** to a person's ability to **perform the duties or responsibilities of the job** they are seeking.

EEOC ANALYSIS

To accomplish this, the EEOC recommends in its 2012 guidance paper relating to the disparate impact of the use of criminal histories of protected classes that an employer utilize the factors identified in the 1975 Eighth Circuit decision, *Green v. Missouri Pacific Railroad*, 523 F.2d 1290 (8th Cir. 1975). Those factors are:

- The nature and gravity of the offense or conduct
- The time that has passed since the offense, conduct and/or completion of the sentence
- The nature of the job held or sought

WHAT SHOULD NOT BE CONSIDERED BY THE EMPLOYER

- An arrest not leading to a conviction, except where a crime is unresolved or where charges are pending against a person
- Convictions that have been judicially voided or expunged
- Charges that have been resolved through the completion of a diversion or deferral of judgment program

EXCEPTIONS

The proposed policy would not apply where a federal, state or local law or regulation requires or authorizes the consideration of a person's criminal history. Such situations include:

- Employment with law enforcement or in the criminal justice system
- Private security employment, where a license is required by the Oregon Department of Safety Standards and Training
- Employees who have direct access to or provide services for children, the elderly, persons with disabilities, persons with a mental illness, or individuals with alcohol or drug dependence or substance abuse disorders
- Employees required to be licensed, registered, certified or otherwise authorized to practice a profession or trade in this state and individuals applying for licensure, registration, certification or authorization to practice a profession or trade in this state.
- Positions designated by the employer as part of a federal, state or local government program designed to encourage the employment of those with criminal histories

PROCESS IF EMPLOYER TAKES AN ADVERSE EMPLOYMENT DECISION

If after making an individualized assessment to determine whether a specific offense has a direct relationship to a person's ability to perform the duties or responsibilities of the job they are seeking, an employer decided to decline to hire, not promote or discharge a person, or to revoke a person's Conditional Offer of Employment, the employer would have to:

- Inform the person of the adverse employment decision and indicate what portions of the criminal history check influenced the decision
- Give the person a copy of the criminal history report with information on the source of the report
- Provide Written Notice of Rights with timeline for opportunity to request reconsideration (2 business days)
- Inform the person of enforcement options

RECONSIDERATION

If the person requests reconsideration in a timely manner, employer would then have 2 business days to reconsider the Adverse Employment Decision.

Employer would to conduct an individualized assessment of all relevant evidence offered by the person, including, but not limited to:

- The facts or circumstances surrounding the offense or conduct
- The number of offenses for which the person was convicted
- The person's age at the time of conviction, or release from prison
- 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
- The length and consistency of employment history before and after the offense or conduct
- The person's successful participation in rehabilitation efforts, such as education, training or substance abuse treatment
- Employment or character references and any other information regarding the person's fitness for the particular position
- Whether the person is bonded under a federal, state, or local bonding program.

Unless the employer reaches a different decision on reconsideration, the Adverse Employment Decision would become final 4 business days after the initial Notice of Adverse Employment Decision.

ENFORCEMENT

Action by The City Attorney

If the City Attorney determines that a violation of the policy occurred, she could initiate a Code violation proceeding after giving the employer notice of and an opportunity to explain the allegations.

Private Right of Action

A person claiming to be aggrieved under this policy would have a cause of action in any court of competent jurisdiction as provided in ORS 659A.885 (Civil Action).

PUBLIC EDUCATION AND OUTREACH

It is strongly encouraged that The City develop and implement an outreach program to inform employers and members of the public about the proposed ordinance and how it will affect their hiring practices and rights.