

ORDINANCE No. 187459 As Amended

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 barriers to employment for people with criminal histories helps the economy. Putting people with criminal histories back to work increases their lifetime earnings and tax contributions and saves public funds by reducing recidivism.
2. Employing people with criminal histories also improves public safety. Employment has been shown to be a major factor in reducing further illegal activity by those with criminal histories.
3. Children and families suffer when people with criminal histories are unable to work. Upward mobility for those with criminal histories is significantly diminished. Family members often struggle to offer financial support to relatives with criminal histories, resulting in financial challenges or hardships to themselves. Many parents with criminal histories have trouble paying child support.
4. Routine criminal background checks by employers have increased dramatically in recent years. Many employers refuse to consider applicants with criminal histories. Many help-wanted advertisements disqualify those with criminal histories.
5. Barriers to employment based on criminal histories disproportionately affect historically disadvantaged communities and communities of color.
6. Studies show that personal contact and context can put a criminal history 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 histories who would be screened out by a blanket prohibition on hiring those with such a history. Having personal contact with potential employers has been shown to measurably reduce the negative effect of a criminal history. It has been shown that in many instances, applicants can compensate for their criminal histories based on their personality, qualifications and ability to make in-person contact with hiring authorities.
7. Many people with criminal histories can be valuable employees. Employers who have hired people with histories 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 position. An employer who makes an individualized assessment of a person's criminal history and determines in good faith that a specific offense or conduct is job related for the position in question and consistent with business necessity is entitled to decline to hire that person for that job.
9. Governor Kate Brown signed H.B. 3025 on June 26, 2015, which prohibits Oregon employers from requiring an applicant to disclose a criminal conviction on an employment application or prior to an initial interview, unless the employer is exempt from the new law. H.B. 3025 takes effect January 1, 2016. The state law does not contain any preemption language. To the contrary, the statute expressly contemplates that local legislation may *require* employers to consider criminal history information, where the statute otherwise would preclude an employer from doing so.
10. Delaying conviction inquiries until an employer has made a conditional offer of employment increases the effectiveness of a fair-chance hiring policy. This component of the policy also offers several benefits to employers, such as clarity in decision-making and potential cost-reduction in the hiring process. Moreover, this may save investigative costs, as BOLI would be in a better position to ensure that the policy is upheld.
11. Delaying conviction inquiries until the conditional offer stage does not encroach upon the public safety needs of the employer. The policy does not change an employer's decision of *whether* a conviction history inquiry is made, but simply *when* an inquiry may be made.
12. If a criminal background inquiry is delayed until the conditional offer stage, the candidate can be assured that until that point, his or her merits, accomplishments, and skill set were considered fairly by the employer. If an applicant is then denied the position, both employer and applicant have clarity that the rationale for the denial is as a result of the background check, rather than the applicant's qualifications. This transparency benefits the employer by assuring the candidate, and any enforcement agency that is investigating a complaint, that the applicant was considered fully for the position.
13. The conditional offer threshold inquiry is aligned with the Equal Employment Opportunity Commission's recommendations. Limiting inquiries until a conditional offer of employment is also consistent with the Office of Personnel Management (OPM), which provides guidance for federal agency and federal contractor hiring. OPM recommends in its federal hiring best practices that criminal record inquiries should not be made until the conditional offer of employment stage because it is "more practical and cost-effective to first ensure that the applicant is eligible for the position.

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 governing the implementation of this Code shall be drafted by the City Attorney and brought before Council for authorization, as described in Exhibit A; and
- c. That the City may contract with the Bureau of Labor and Industries (BOLI) for enforcement of City Code Chapter 23.10. The City Attorney is directed to negotiate an intergovernmental agreement with BOLI for enforcement of Chapter 23 and to bring the agreement to Council for authorization upon completion of the negotiations.
- d. That the City Attorney provide Council with a one year report on claims by individuals, or any actions brought by the BOLI Commissioner, State Attorney General or City Attorney, for both the State and City claims.

Passed by Council: NOV 25 2015

Mayor Charlie Hales

Prepared by: Judy S. Prosper

Date Prepared: November 10, 2015

Mary Hull-Caballero

Auditor of the City of Portland

By 

Deputy

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Agenda No.
ORDINANCE
Title

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INTRODUCED BY Commissioner/Auditor: Mayor Hales	CLERK USE: DATE FILED <u>NOV 10 2015</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Hales <i>[Signature]</i>	Mary Hull Caballero Auditor of the City of Portland
Position 1/Utilities - Fritz	By: <i>[Signature]</i> Deputy
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Novick	
BUREAU APPROVAL Bureau: Mayor's Office	ACTION TAKEN: NOV 18 2015 PASSED TO SECOND READING As Amended NOV 25 2015 9:30 A.M.
Prepared by: Rachael Wiggins Date Prepared: 11/9/2015	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances <i>Tori</i>	
City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan <i>[Signature]</i>	
Council Meeting Date November 18, 2015	

AGENDA
TIME CERTAIN <input checked="" type="checkbox"/> Start time: <u>2:45 pm</u>
Total amount of time needed: 2 hour (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: (for presentation, testimony and discussion)

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 ✓	