

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

Exhibit A

CHAPTER 23.10

REMOVING BARRIERS TO EMPLOYMENT

Sections:

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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.

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- 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.

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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

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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:

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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.

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- 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 _____.

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 |
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