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PRACTICAL APPLICATIONS: NAVIGATING CALIFORNIA'S LATEST BAN THE BOX LEGISLATION



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The following materials are provided as a supplement to the presentation referenced above.

MATERIALS

- California Government Code Section 12952
- California Labor Code Section 432.7
- Fair Chance Initiative for Hiring Ordinance Guideline for Employers (Flow Chart)
- Los Angeles Municipal Code Article 9: Employers' Use Of Criminal History For Consideration Of Employment Applications
- City of Los Angeles Rules and Regulations Implementing The Fair Chance Initiative For Hiring (Ban The Box) Ordinance
- OC Lawyer Magazine Reprint – *When To Ask, When To Tell: Navigating California's Recent Ban-The-Box Legislation* (May 2018) Authors: McQueen & Crivaro
- San Francisco Police Code ARTICLE 49: Procedures For Considering Arrests And Convictions And Related Information In Employment And Housing Decisions
- Sample Forms: Conditional Offer of Employment; Notice of Preliminary Decision; Notice of Final Decision

ORANGE COUNTY LAWYER MAGAZINE ARTICLE

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WHEN TO ASK, WHEN TO TELL: NAVIGATING CALIFORNIA'S RECENT BAN-THE-BOX LEGISLATION

by TERESA A. MCQUEEN and ALAN J. CRIVARO

Recognizing that a criminal conviction for even a minor offense can significantly impede an individual's employment chances, California first passed legislation in 2013 to reduce such barriers. Dubbed "Ban the Box," proponents sought removal of the check box on hiring applications asking about an applicant's criminal history. Advocates argued that otherwise qualified, skilled job seekers were being unjustly eliminated at the outset by prospective employers due to the existence of a criminal conviction despite the nature of the offense or its remote past. Civil rights activists claimed that disparate inequities in the treatment of certain minorities by the criminal justice system, including convictions for minor drug offenses, continued to harm these groups as they fought to bring themselves out of poverty by entering the job market. This article on California's latest Ban-the-Box efforts expresses the varied opinions of its authors and provides a generalized overview of this new legislation. It is not offered as an in-depth analysis.

Historically, neither public nor private employers in California were permitted to ask applicants about arrests or detentions that did not result in a conviction. The reason for this was that in the absence of a conviction, the relationship of the arrest or detention to aberrant behavior was simply too tenuous. Ultimately, increases in employment opportunities for past criminal offenders leading to a reduction in recidivism and improved economic stability paved the way for Labor Code section 432.9. The statute prohibited state, county, and city agencies from requiring disclosure of any criminal conviction until after a determination that the individual meets minimum qualifications for the position. Correspondingly, by 2015, all federal agencies were directed to refrain from similar inquiry on initial government job applications. Subsequently, five states and several major cities adopted fair chance hiring laws extending Ban the Box practices to private employers.¹

In 2017, California revisited Ban the Box with the enactment of Assembly Bill 1008 and the repeal of Labor Code section 432.9. Effective January 1, 2018, California Government Code section 12952 provides expanded protections

and greater purview in keeping with the legislature's findings that nearly one in three adult Californians have an arrest or conviction record impacting their ability to obtain employment. With its validating and notice strictures on an employer's inquiries into an applicant's criminal background history, AB 1008 shifts California into a new realm of discrimination protection.

The Individualized Assessment

California Government Code section 12952 makes several significant changes to current employee selection processes for employers with five or more employees. The statute makes it an unlawful employment practice to ask questions on an employment application about, or to consider an applicant's, criminal conviction history until after a conditional offer of employment has

be considered.

Subdivision (c)(1)(A) of the new statute imposes additional steps on an employer who, after making a conditional offer of employment, denies employment based solely or in part on the applicant's criminal conviction history. In that event, the employer "shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position." As part of its individualized assessment, the following enumerated factors must be considered: (a) the nature and gravity of the offense; (b) the time that has passed since the offense; (c) the completion of the sentence; and (d) the nature of the job held or sought. This analysis unequivocally mandates the employer go beyond a mere review of a criminal "rap" sheet. Results of any individualized assessment may, but need not be, committed to writing.

Overall, given the risks associated with making individualized assessments on a case-by-case basis, many employers could benefit from initiating an audit of all current job descriptions. This advanced generalized assessment audit—performed ahead of any specific job posting—will allow employers to make initial determinations as to the types of convictions that would likely disqualify applicants from performing the duties specific to each job reviewed. For example, certain offenses tend to raise red

flags for employers. An individual with a felony fraud conviction would likely be disqualified from holding a position of trust such as a bank teller or some other type of financial fiduciary. Of course, there is always the chance an employer could be faced with a set of unique circumstances which would warrant a more individualized assessment, but the goal of the statute is forethought and consideration. If an employer can show a reasoned decision, having followed the letter and spirit of the statute, there is a good chance liability associated with claims of discriminatory hiring or employment practices can be reduced.

The facts underlying a conviction can make all the difference for an informed, individualized assessment. For instance, Penal Code section 487 is the crime of grand theft, a felony in this state. Understandably, employers would be concerned about such a

[A] properly performed individualized assessment may reveal an otherwise qualified applicant who formerly would not have even been considered a viable job candidate.

been made. Consistent with Labor Code section 432.7, a conviction is defined as a plea, verdict, or finding of guilt. It is not necessary that a sentence be imposed by the court. A conviction does not include juvenile court adjudications. Subject to specific exceptions delineated in Labor Code section 432.7, an employer is also forbidden from considering or disseminating certain information when conducting a background check of the applicant's conviction history. This prohibited information includes an arrest that did not result in a conviction, as well as convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law. An employer may ask about an arrest where the applicant is currently released on bail or on their own recognizance pending trial. Lastly, a candidate's participation or referral to a pre-trial or post-trial diversion program may not

conviction for applicants seeking positions that involve handling money. Knowing the Penal Code statutory number tells an employer very little about the nature or the gravity of the offense or the trustworthiness of the applicant. Ten years ago, a grand theft was defined as the taking of any property valued over four hundred dollars. Given the low threshold, an individual who stole money from a previous employer may not be viewed in the same light as, say, an individual who, a decade ago as an eighteen-year-old, took designer jeans and cosmetics from the local mall. Both individuals committed a grand theft. Both individuals' conviction history would report the identical Penal Code violation, yet the specifics of the factual basis for each conviction are completely different. As envisioned by the legislature, a properly performed individualized assessment may reveal an otherwise qualified applicant who formerly would not have even been considered a viable job candidate.

Notice Requirements

Along with multi-factored assessment elements, section 12952 also outlines several notice requirements. The first is conveyance of the conditional offer of employment. The statute is silent on whether the conditional offer must be in writing. The second notice requirement comes into play once the employer makes a preliminary decision to disqualify the applicant based on information discovered in the criminal conviction history. Although the employer need not explain the reasoning for its preliminary decision, the applicant must be notified in writing. This notification must advise the applicant of the disqualifying conviction(s) constituting the basis for the initial decision to rescind the conditional offer. If a conviction history report was used, the applicant must be provided a copy. The applicant must also be advised of their right to respond to the preliminary decision before it becomes final. The notice must also provide the applicant a deadline by which they may respond. The applicant should be informed that any response may include submission of evidence challenging the accuracy of the conviction report, evidence of rehabilitation, or any mitigating circumstances.²

Statutorily, the applicant has five business days in which to respond to the notice before the employer can make its final decision. Applicants are given an additional five business days to respond if they notify the employer in writing that they dispute the accuracy of the conviction history report, and

show they are taking steps to gather evidence in support of that claim.³ Such evidence in rebuttal could include official court records, court orders, police reports, transcripts, or perhaps even documents from the files of the attorney who represented them in the earlier criminal proceeding. It is worth underscoring that the statute only prescribes a minimum timeframe. Nothing prevents an employer from extending the applicant's deadline. Realistically, even in this day of electronic records, access to court files and records that have been closed and sent off to storage may, in many counties, take longer than the minimum days provided by the statute. Given these time constraints, it makes sense for applicants with criminal history concerns to try and procure explanatory or mitigating evidence before applying for a position.

Prior to making its final decision, an employer must consider any responsive information provided by the applicant. Should the employer's ultimate decision be a "no-hire" predicated in part upon the criminal conviction history, a third and final written notice conveying the disqualification decision is required. This notice must inform the applicant of their right to file a complaint with the Department of Fair Employment and Housing and include any procedures the employer has for challenging the decision or reconsideration.⁴

Final Thoughts

AB 1008 is based on the premise that job applicants should initially be judged on their qualifications and not automatically excluded from consideration for a past mistake. Opponents argue the statute places an employer in an untenable situation, subjecting them to lawsuits for unfair labor practices. Specifically, opponents cite to the potential for mistakes in complying with the statute's increased notice mandates and difficulties in conducting individualized assessments as some of the requirements that could potentially make compliance too complicated and burdensome for large and small employers.

Arguably, postponing inquiry into the criminal history until after the conditional offer has been made places additional burdens on employers. For employees, the timeframe for responding to a denial is likely insufficient and the applicability of the statute to existing employees remains an ambiguity. But, on balance, public safety is enhanced by a reduction in recidivism. Only by employment can previously incarcerated individuals legally support their families and become productive members of society. Changes

in the decriminalization for the possession of drugs, reclassification and reduction of certain offenses, increased diversion, and expungement opportunities were but a few of the recent changes to California law recognizing the need to eliminate barriers to meaningful employment opportunities. Moreover, actions to dismiss, reduce, or seal decades of marijuana-related convictions in various counties across California could potentially see thousands of people with their criminal pasts erased.⁵

Clearly, AB 1008 is creating ripples of change but, to remain effective, new regulations must be promulgated in the hopes of refining the statute and reducing ambiguities. In the end, for all its challenges, Government Code section 12952 seems to have its heart in the right place. Are the burdens worth the benefits? Only time will tell.

ENDNOTES

- (1) See Stats. 2017 ch. 789 § 1 (AB 1008), Legislative Findings and Declarations.
- (2) Cal. Gov't Code § 12952(c)(2).
- (3) Cal. Gov't Code § 12952(c)(3).
- (4) Cal. Gov't Code § 12952(c)(5).
- (5) Kimberly Veklerov, *Alameda County prosecutors aim to dismiss thousands of cannabis convictions*, San Francisco Chronicle (February 20, 2018), <https://www.sfgate.com/crime/article/Alameda-County-prosecutors-aim-to-dismiss-12627787.php>.



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KEY DEFINITIONS AND TERMS

DEFINITIONS

Criminal Offenses Defined

An ***infraction*** is an offense only punishable by a fine not exceeding two hundred and fifty dollars (\$250.00). (Penal Code §19.8.)

A ***misdemeanor*** is a crime punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both. (Penal Code §19.)

A ***felony*** is a crime that is punishable with death, by imprisonment in the state prison, or in a county jail. (Penal Code §17.)

Key Terms

An ***arrest*** is the taking of a person into the custody of law enforcement. (Penal Code § 834.)

A ***conviction*** is a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. (Labor Code §432.7(a).) Note: Adjudications by a juvenile court are not convictions by law.

“Dismissed or expunged” refers to a conviction which the court in the interest of justice permits the person to withdraw the plea of guilty or the finding of guilt and enter a plea of not guilty. The court then dismisses the criminal accusation against the person. (Penal Code §§1203.4-1203.42.)

“Sealing” of records by court action or by operation of law refers to arrest, juvenile adjudications or convictions which occurred when the person was under the age of 18 years and upon “sealing” are deemed not to have occurred. (Penal Code §§1203.45 & 1203.47.)

Diversion refers to a court’s dismissal of certain criminal charges after a person successfully completes a specific counseling/rehabilitative program. (Penal Code §1000 et. seq.)

CALIFORNIA CODE SECTIONS

§ 12952. Disclosure of conviction history by applicant for employment; Requirements for denial of employment solely or in part on applicant's conviction history; Applicability

- (a) Except as provided in subdivision (d), it is an unlawful employment practice for an employer with five or more employees to do any of the following:
 - (1) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history.
 - (2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the employer has made a conditional offer of employment to the applicant.
 - (3) To consider, distribute, or disseminate information about any of the following while conducting a conviction history background check in connection with any application for employment:
 - (A) Arrest not followed by conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of [*Section 432.7 of the Labor Code*](#).
 - (B) Referral to or participation in a pretrial or posttrial diversion program.
 - (C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.
 - (4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.
- (b) This section shall not be construed to prevent an employer from conducting a conviction history background check not in conflict with the provisions of subdivision (a).
- (c)
 - (1)
 - (A) An employer that intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment described in this paragraph, the employer shall consider all of the following:
 - (i) The nature and gravity of the offense or conduct.
 - (ii) The time that has passed since the offense or conduct and completion of the sentence.
 - (iii) The nature of the job held or sought.
 - (B) An employer may, but is not required to, commit the results of this individualized assessment to writing.
 - (2) If the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification may, but is not required to, justify or explain the employer's reasoning for making the preliminary decision. The notification shall contain all of the following:
 - (A) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer.

Cal Gov Code § 12952

- (B) A copy of the conviction history report, if any.
 - (C) An explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both.
- (3) The applicant shall have at least five business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. If, within the five business days, the applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history report that was the basis for the preliminary decision to rescind the offer and that the applicant is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice.
 - (4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision.
 - (5) If an employer makes a final decision to deny an application solely or in part because of the applicant's conviction history, the employer shall notify the applicant in writing of all the following:
 - (A) The final denial or disqualification. The employer may, but is not required to, justify or explain the employer's reasoning for making the final denial or disqualification.
 - (B) Any existing procedure the employer has for the applicant to challenge the decision or request reconsideration.
 - (C) The right to file a complaint with the department.
- (d) This section does not apply in any of the following circumstances:
- (1) To a position for which a state or local agency is otherwise required by law to conduct a conviction history background check.
 - (2) To a position with a criminal justice agency, as defined in [Section 13101 of the Penal Code](#).
 - (3) To a position as a Farm Labor Contractor, as described in [Section 1685 of the Labor Code](#).
 - (4) To a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. For purposes of this paragraph, federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in [Section 3\(a\)\(26\)](#) of the Securities Exchange Act of 1934, as amended by *124 Stat. 1652 (Public Law 111-203)*, pursuant to the authority in [Section 19\(b\)](#) of the Securities Exchange Act of 1934, as amended by *124 Stat. 1652 (Public Law 111-203)*.
- (e) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.
- (f) For purposes of this section:
- (1) "Conviction" has the same meaning as defined in paragraphs (1) and (3) of subdivision (a) of [Section 432.7 of the Labor Code](#).
 - (2) Notwithstanding paragraph (1), the term "conviction history" includes:
 - (A) An arrest not resulting in conviction only in the specific, limited circumstances described in subdivision (f) of [Section 432.7 of the Labor Code](#), when an employer at a health facility, as defined in [Section 1250 of the Health and Safety Code](#), may ask an applicant for certain positions about specified types of arrests.
 - (B) An arrest for which an individual is out on bail or his or her own recognizance pending trial.

History

Added [Stats 2017 ch 789 § 2 \(AB 1008\)](#), effective January 1, 2018.

Annotations

Notes

Note—

[Stats 2017 ch 789](#) provides:

[SECTION 1](#). The Legislature finds and declares all of the following:

(a) In 2013, the State of California passed historic legislation to reduce barriers to employment for people with conviction histories, and to decrease unemployment in communities with concentrated numbers of people with conviction histories, recognizing that these barriers are matters of statewide concern. The Ban the Box law passed in 2013 applied to state agencies, all cities and counties, including charter cities and charter counties, and special districts.

(b) In 2015, President Obama directed all federal agencies to “Ban the Box” and refrain from asking applicants about their convictions on the initial job application.

(c) Nationwide, 29 states and over 150 cities and counties have adopted a “Ban the Box” law, and over 300 companies have signed the White House Fair Chance hiring pledge.

(d) Nine states and 15 major cities, including Los Angeles and San Francisco, have adopted fair chance hiring laws that cover both public and private sector employers. Over 20 percent of the United States population now lives in a state or locality that prohibits private employers from inquiring into an applicant’s record at the start of the hiring process.

(e) Since 2013, when Assembly Bill 218 was signed into law, five states have adopted fair chance hiring laws that cover private employers, Connecticut, Illinois, New Jersey, Oregon, and Vermont, as well as several major cities, including Baltimore, New York City, Philadelphia, and Austin, Texas.

(f) Roughly seven million Californians, or nearly one in three adults, have an arrest or conviction record that can significantly undermine their efforts to obtain gainful employment.

(g) Experts have found that employment is essential to helping formerly incarcerated people support themselves and their families, that a job develops prosocial behavior, strengthens community ties, enhances self-esteem, and improves mental health, all of which reduce recidivism. These effects are strengthened the longer the person holds the job, and especially when it pays more than minimum wage.

(h) Experts have found that people with conviction records have lower rates of turnover and higher rates of promotion on the job and that the personal contact with potential employees can reduce the negative stigma of a conviction by approximately 15 percent.

California Labor Code § 432.7

§ 432.7. Disclosure of criminal or juvenile records information by applicants for employment

(a)

(1) No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, [Sections 1203.4, 1203.4a, 1203.45, and 1210.1 of the Penal Code](#), nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, [Sections 1203.4, 1203.4a, 1203.45, and 1210.1 of the Penal Code](#). As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

(2) No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law.

(3) For purposes of this section, “conviction” does not include, and shall not be construed to include, any adjudication by a juvenile court or any other court order or action taken with respect to a person who is under the process and jurisdiction of the juvenile court law.

(b) Nothing in this section shall prohibit the disclosure of the information authorized for release under [Sections 13203 and 13300 of the Penal Code](#), to a government agency employing a peace officer. However, the employer shall not determine any condition of employment other than paid administrative leave based solely on an arrest report. The information contained in an arrest report may be used as the starting point for an independent, internal investigation of a peace officer in accordance with Chapter 9.7 (commencing with [Section 3300 of Division 4 of Title 1 of the Government Code](#)).

(c) In any case where a person violates this section, or Article 6 (commencing with [Section 11140 of Chapter 1 of Title 1 of Part 4 of the Penal Code](#)), the applicant may bring an action to recover from that person actual damages or two hundred dollars (\$200), whichever is greater, plus costs, and reasonable attorney’s fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and reasonable attorney’s fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(d) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.

Cal Lab Code § 432.7

(e) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies as defined in [Section 13101 of the Penal Code](#) are not covered by this section.

(f)

(1) Except as provided in paragraph (2), nothing in this section shall prohibit an employer at a health facility, as defined in [Section 1250 of the Health and Safety Code](#), from asking an applicant for employment either of the following:

(A) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in [Section 290 of the Penal Code](#).

(B) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in [Section 11590 of the Health and Safety Code](#).

(2)

(A) An employer specified in paragraph (1) shall not inquire into information concerning or related to an applicant's arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law, unless the information concerns an adjudication by the juvenile court in which the applicant has been found by the court to have committed a felony or misdemeanor offense specified in paragraph (1) that occurred within five years preceding the application for employment.

(B) Notwithstanding any other provision of this subdivision, an employer specified in paragraph (1) shall not inquire into information concerning or related to an applicant's juvenile offense history that has been sealed by the juvenile court.

(3) An employer seeking disclosure of offense history under paragraph (2) shall provide the applicant with a list describing the specific offenses under [Section 11590 of the Health and Safety Code](#) or [Section 290 of the Penal Code](#) for which disclosure is sought.

(g)

(1) No peace officer or employee of a law enforcement agency with access to criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(2) No other person authorized by law to receive criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(3) No person, except those specifically referred to in [Section 1070 of the Evidence Code](#), who is not authorized by law to receive or possess criminal or juvenile justice records information maintained by a local law enforcement criminal or juvenile justice agency, pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, shall knowingly receive or possess that information.

(h) "A person authorized by law to receive that information," for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal or juvenile offender records maintained by a local law enforcement criminal or juvenile justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal or juvenile justice agency who is required by that employment to receive, analyze, or process criminal or juvenile offender record information.

Cal Lab Code § 432.7

(i) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

(j) As used in this section, “pretrial or posttrial diversion program” means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with [Section 1001 of Title 6 of Part 2 of the Penal Code](#), [Section 13201 or 13352.5 of the Vehicle Code](#), Sections 626, 626.5, 654, or 725 of, or Article 20.5 (commencing with [Section 790 of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code](#), or any other program expressly authorized and described by statute as a diversion program.

(k)

(1) Subdivision (a) shall not apply to any city, city and county, county, or district, or any officer or official thereof, in screening a prospective concessionaire, or the affiliates and associates of a prospective concessionaire for purposes of consenting to, or approving of, the prospective concessionaire’s application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

(2) For purposes of this subdivision the following terms have the following meanings:

(A) “Screening” means a written request for criminal or juvenile history information made to a local law enforcement agency.

(B) “Prospective concessionaire” means any individual, general or limited partnership, corporation, trust, association, or other entity that is applying for, or seeking to obtain, a public agency’s consent to, or approval of, the acquisition by that individual or entity of any beneficial ownership interest in any public agency’s concession, lease, or other property right whether directly or indirectly held. However, “prospective concessionaire” does not include any of the following:

(i) A lender acquiring an interest solely as security for a bona fide loan made in the ordinary course of the lender’s business and not made for the purpose of acquisition.

(ii) A lender upon foreclosure or assignment in lieu of foreclosure of the lender’s security.

(C) “Affiliate” means any individual or entity that controls, or is controlled by, the prospective concessionaire, or who is under common control with the prospective concessionaire.

(D) “Associate” means any individual or entity that shares a common business purpose with the prospective concessionaire with respect to the beneficial ownership interest that is subject to the consent or approval of the city, county, city and county, or district.

(E) “Control” means the possession, direct or indirect, of the power to direct, or cause the direction of, the management or policies of the controlled individual or entity.

(l)

(1) Nothing in subdivision (a) shall prohibit a public agency, or any officer or official thereof, from denying consent to, or approval of, a prospective concessionaire’s application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest based on the criminal history information of the prospective concessionaire or the affiliates or associates of the prospective concessionaire that show any criminal conviction for offenses involving moral turpitude. Criminal history information for purposes of this subdivision includes any criminal history information obtained pursuant to Section 11105 or 13300 of the Penal Code.

(2) In considering criminal history information, a public agency shall consider the crime for which the prospective concessionaire or the affiliates or associates of the prospective concessionaire was convicted only if that crime relates to the specific business that is proposed to be conducted by the prospective concessionaire.

(3) Any prospective concessionaire whose application for consent or approval to acquire a beneficial interest in a concession, lease, or other property interest is denied based on criminal history information shall be provided a written statement of the reason for the denial.

(4)

(A) If the prospective concessionaire submits a written request to the public agency within 10 days of the date of the notice of denial, the public agency shall review its decision with regard to any corrected record or other evidence presented by the prospective concessionaire as to the accuracy or incompleteness of the criminal history information utilized by the public agency in making its original decision.

(B) The prospective concessionaire shall submit the copy or the corrected record of any other evidence to the public agency within 90 days of a request for review. The public agency shall render its decision within 20 days of the submission of evidence by the prospective concessionaire.

(m) Paragraph (1) of subdivision (a) does not prohibit an employer from asking an applicant about a criminal conviction of, seeking from any source information regarding a criminal conviction of, utilizing as a factor in determining any condition of employment of, or entry into a pretrial diversion or similar program by, the applicant if, pursuant to Section 1829 of Title 12 of the United States Code or any other state or federal law, any of the following apply:

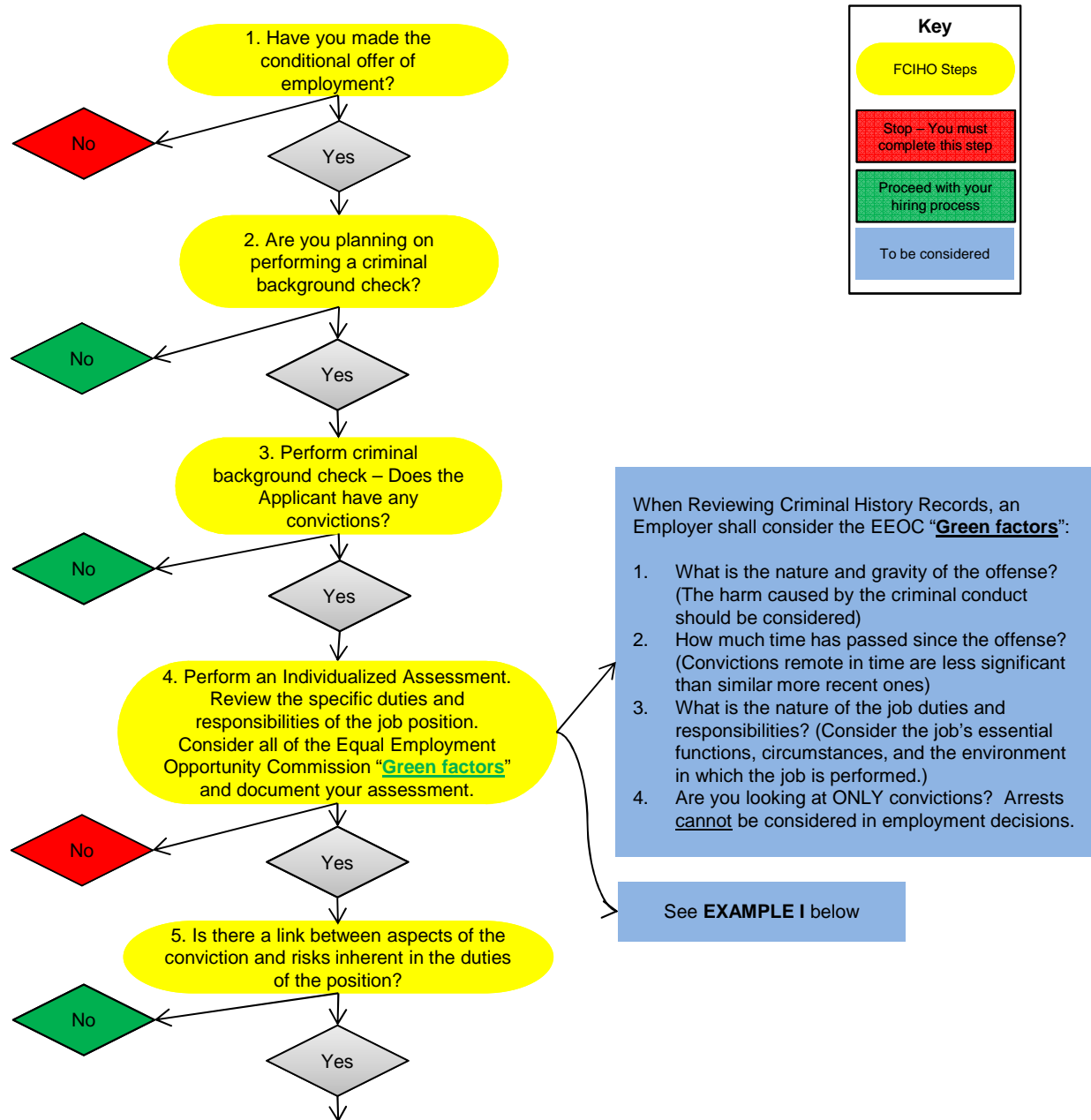
- (1) The employer is required by law to obtain information regarding a conviction of an applicant.
- (2) The applicant would be required to possess or use a firearm in the course of his or her employment.
- (3) An individual who has been convicted of a crime is prohibited by law from holding the position sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.
- (4) The employer is prohibited by law from hiring an applicant who has been convicted of a crime.

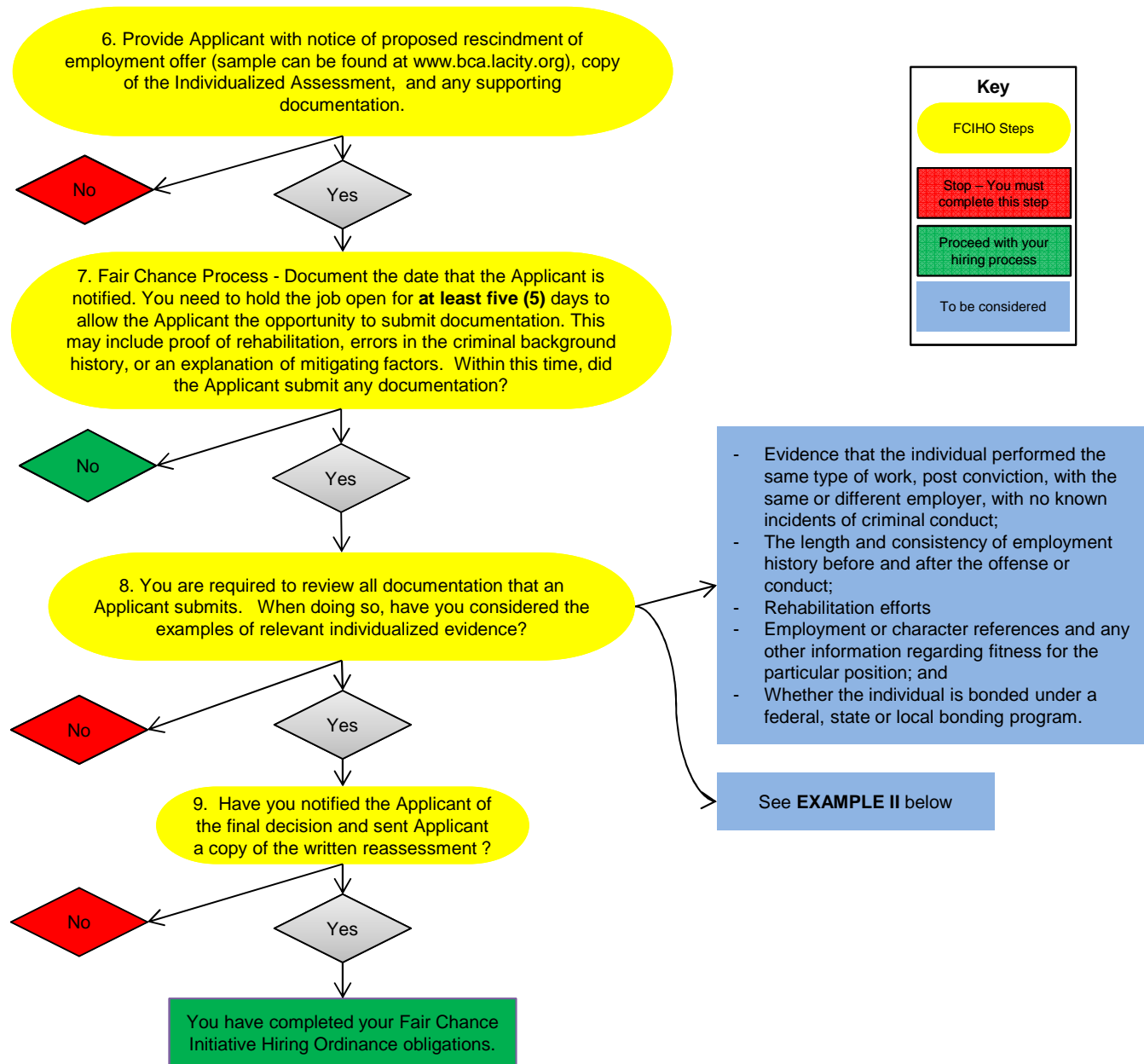
History

Added Stats 1975 ch 1043 § 2. Amended Stats 1975 ch 1117 § 3; Stats 1977 ch 574 § 1, effective September 3, 1977; Stats 1981 ch 1103 § 1; Stats 1983 ch 1092 § 192, effective September 27, 1983, operative January 1, 1984, ch 1297 § 2; Stats 1984 ch 216 § 4, operative September 4, 1984; [Stats 1990 ch 769 § 1 \(AB 4311\)](#); [Stats 1992 ch 1026 § 3 \(SB 1769\)](#); [Stats 2013 ch 721 § 1 \(SB 530\)](#), effective January 1, 2014; [Stats 2016 ch 686 § 1 \(AB 1843\)](#), effective January 1, 2017.

LOCAL AND MUNICIPAL CODE SECTIONS

Fair Chance Initiative for Hiring Ordinance Guideline for Employers





EXAMPLE I - Sample Job Description for Delivery Driver

- Required to have a CA Commercial Driver's License
- Clean Motor Vehicle Record for the past 5 years
- Make deliveries to households and businesses
 - May have access to cash
- May be required to deal with confidential information, such as debit/credit cards.

Scenario A Criminal History Record	Scenario B Criminal History Record	Scenario C Criminal History Record
11/2016 – DUI 5/2016 – DUI 2015 – DUI 2012 – Battery Scenario A – Very recent activity shows conviction pattern that would be a liability for a job where the a majority of the job responsibilities require a clean driving record.	2014 – Check Fraud 2013 – Credit Card Fraud 2012 – Grant Theft 2011 – Petty Theft 2011 – Shoplifting Scenario B – Conviction pattern (series of convictions that are all theft/fraud related) with fairly recent activity indicates a liability for a job that is required to handle both cash and confidential credit card information. While these are not primary functions, they are necessary components of the required responsibilities.	1999 – DUI 1996 – Reckless Driving 1992 – Simple Assault 1990 – Aggravated Trespassing 1989 – Vandalism Scenario C – While some of the Convictions are related to the job duties, the last Conviction occurred more than 17 years ago, and there has not been noted criminal convictions in recent years.

In Example I, Scenario C, after performing an Individual Assessment, an Employer may conclude the Applicant's clean record in recant years supports the decision to hire the Applicant.

EXAMPLE II – In Scenario A, the Applicant submits documentation showing:

- Errors in Criminal History (2015 and 2016 entries) that were the result of identity theft.
- 2012 Battery charge explanation as self defense when the Applicant tried to break up a fight.
 - Character reference from volunteer organization for the past 5 years

In Example I, both Scenario A and B, the Employer could consider rescinding the offer of employment to the Applicant because of recent convictions listed on their Criminal History Report. However, in Scenario A, the Employer received documents, such as those listed in Example II. After the review of the documents, the Employer must do a reassessment to determine if the information submitted changes the outcome of the initial assessment.

SEC. 188.15. SEVERABILITY.

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

LOS ANGELES MUNICIPAL CODE*

ARTICLE 9

EMPLOYERS' USE OF CRIMINAL HISTORY FOR CONSIDERATION OF EMPLOYMENT APPLICATIONS

(Article Added by Ord. No. 184,652, Eff. 1/22/17.)

Section

- 189.00 Purpose.
- 189.01 Definitions.
- 189.02 Employment Application Procedures.
- 189.03 Employer Assessment of Criminal History.
- 189.04 Notice and Posting Requirements for Employers.
- 189.05 Retaliation Prohibited.
- 189.06 Record Retention.
- 189.07 Exceptions from Employment Application Procedures.
- 189.08 Civil Enforcement.
- 189.09 Administrative Enforcement.
- 189.10 Penalty/Administrative Fine Schedule.
- 189.11 Implementation.
- 189.12 Other Legal Requirements.
- 189.13 Conflicts.
- 189.14 Authority.
- 189.15 Severability.

*** Additional materials, information & forms
for the City of Los Angeles may be found at:
<https://bca.lacity.org/fair-chance>**

SEC. 189.00. PURPOSE.

The primary purpose of the restrictions imposed by this ordinance is to promote public health, safety and welfare by eliminating a barrier to employment of persons who have been convicted of crimes, reducing recidivism, facilitating the reintegration into society of persons with conviction records and decreasing unemployment in parts of the community in which persons who have been convicted of crimes predominately reside. This ordinance shall be referred to as the Los Angeles Fair Chance Initiative for Hiring (Ban the Box).

Studies show that the disclosure of a criminal conviction by job applicants on application forms often automatically excludes them from consideration of employment regardless of any relationship between the conduct underlying the conviction and the duties and responsibilities of the job, the length of time since the conduct occurred and the risk of the conduct reoccurring on the job. Automatic exclusion of persons with prior criminal convictions from consideration of employment prevents otherwise qualified applicants from obtaining employment and may result in employers hiring less qualified candidates, increases the risk of recidivism of persons so excluded from consideration and disparately impacts persons of certain races and national origin.

In 2013, the State Legislature passed and the Governor signed Assembly Bill No. 218, which amended the State's Labor Code to prevent the State and local governments from seeking disclosure of conviction history from employment applicants until the agency has determined the applicant meets the minimum employment qualifications. In April 2014, the City of Los Angeles implemented AB 218 by removing questions regarding criminal convictions from employment applications, reviewing a job applicant's criminal history only after a position eligibility list is prepared, and considering, among other things, the relationship between the conviction and the duties of

the position.

In November 2015, the President of the United States announced that the federal government and federal contractors could not consider job applicants' criminal convictions in the initial stages of the employment process. Numerous other cities have similarly adopted regulations preventing inquiry into job applicants' criminal history until after it is determined they are qualified for the position. This ordinance limits private employers in Los Angeles from inquiring into or seeking a job applicant's criminal history unless and until a conditional offer of employment has been made to that individual.

SEC. 189.01. DEFINITIONS.

The following definitions shall apply to this article:

A. "**Adverse Action**" means an Employer's withdrawal or cancellation of a Conditional Offer of Employment made to an Applicant or a failure or refusal to employ the Applicant.

B. "**Applicant**" means an individual who submits an application or other documentation for Employment.

C. "**City**" means the City of Los Angeles.

D. "**Conditional Offer of Employment**" means an Employer's offer of Employment to an Applicant conditioned only on an assessment of the Applicant's Criminal History, if any, and the duties and responsibilities of the Employment position.

E. "**Conviction**" means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor, provided that the conviction is one for which the person has been placed on probation, fined, imprisoned or paroled.

F. "**Criminal History**" means information regarding one or more Convictions, transmitted orally or in writing or by any other means, and obtained from any source, including, but not limited to, the individual to whom the information pertains and a Criminal History Report.

G. "**Criminal History Report**" means any criminal history report, including, but not limited to, those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement or police agencies, or courts, or by any consumer reporting agency or business or employment screening agency or business.

H. "**Designated Administrative Agency (DAA)**" means the Department of Public Works, Bureau of Contract Administration, who shall bear administrative responsibilities under this article.

I. "**Employee**" means any individual who:

1. Performs at least two hours of work on average each week within the geographic boundaries of the City for an Employer; and

2. Qualifies as an employee entitled to payment of a minimum wage from any Employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

J. "**Employer**" means any individual, firm, corporation, partnership, labor organization, group of persons, association, or other organization however organized, that is located or doing business in the City, and that employs ten or more Employees, including the owner or owners and management and supervisory employees. "**Employer**" includes job placement and referral agencies and other employment agencies. "**Employer**" does not include the City of Los Angeles, any other local governmental unit, or any unit of the state government or the federal government.

K. "**Employment**" means any occupation, vocation, job or work performed in the City, including, but not limited to, temporary or seasonal work, part-time work, contracted work, contingent work, work on commission and work through the services of a temporary or other employment agency, or any form of vocational or educational training with or without pay.

L. **"Fair Chance Process"** means an opportunity for an Applicant to provide information or documentation to an Employer regarding the accuracy of his/her Criminal History or Criminal History Report or that should be considered in the Employer's assessment performed pursuant to Section 189.03, such as evidence of rehabilitation or other mitigating factors.

M. **"Inquire"** means any direct or indirect conduct intended to gather Criminal History information from or about an Applicant, using any mode of communication, including, but not limited to, application forms, interviews and Criminal History Reports.

SEC. 189.02. EMPLOYMENT APPLICATION PROCEDURES.

A. An Employer shall not include on any application for Employment any question that seeks the disclosure of an Applicant's Criminal History.

B. An Employer shall not, at any time or by any means, inquire about or require disclosure of an Applicant's Criminal History unless and until a Conditional Offer of Employment has been made to the Applicant.

SEC. 189.03. EMPLOYER ASSESSMENT OF CRIMINAL HISTORY.

A. An Employer shall not take an Adverse Action against an Applicant to whom a Conditional Offer of Employment has been made based on an Applicant's Criminal History unless the Employer performs a written assessment that effectively links the specific aspects of the Applicant's Criminal History with risks inherent in the duties of the Employment position sought by the Applicant. In performing the assessment, the Employer shall, at a minimum, consider the factors identified by the United States Equal Employment Opportunity Commission and other factors as may be required by rules and guidelines promulgated by the DAA.

B. An Employer, prior to taking an Adverse Action against an Applicant, shall provide that person a Fair Chance Process, including the provision of written notification of the proposed Adverse Action, a copy of the written assessment performed pursuant to Section 189.03 A. and any other information or documentation supporting the Employer's proposed Adverse Action. The Employer shall not take an Adverse Action or fill the Employment position sought by the Applicant for a period of at least 5 business days after the Applicant is informed of the proposed Adverse Action in order to allow the Applicant to complete the Fair Chance Process. If the Applicant provides the Employer with any information or documentation pursuant to the Fair Chance Process, then the Employer shall consider the information or documentation and perform a written reassessment of the proposed Adverse Action. If the Employer, after performing the reassessment of the proposed Adverse Action, takes the Adverse Action against the Applicant, then the Employer shall notify the Applicant of the decision and provide that Applicant with a copy of the written reassessment.

SEC. 189.04. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.

A. Employers shall state in all solicitations or advertisements seeking Applicants for Employment that the Employer will consider for employment qualified Applicants with Criminal Histories in a manner consistent with the requirements of this article.

B. Employers shall post a notice informing Applicants of the provisions of this article in a conspicuous place at every workplace, job site or other location in the City under the Employer's control and visited by Employment Applicants, and shall send a copy of the notice to each labor union or representative of workers with which they have a collective bargaining agreement or other agreement or understanding that is applicable to Employees in the City.

SEC. 189.05. RETALIATION PROHIBITED.

An Employer shall not discharge, reduce the compensation of, or otherwise take any adverse employment action against any Employee for complaining to the City with regard to the Employer's compliance or anticipated compliance with this article, for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting any rights under this article.

SEC. 189.06. RECORD RETENTION.

Employers shall retain all records and documents related to Applicants' Employment applications and the written assessment and reassessment performed pursuant to this article for a period of three years following the receipt of an Applicant's Employment application. Employers shall, upon request, provide the records and documents or access to the records and documents to the DAA in an administrative enforcement proceeding under this article.

SEC. 189.07. EXCEPTIONS FROM EMPLOYMENT APPLICATION PROCEDURES.

Sections 189.02, 189.03 and 189.04 A. do not apply in the following circumstances:

- A. The Employer is required by law to obtain information regarding a Conviction of an Applicant.
- B. The Applicant would be required to possess or use a firearm in the course of his or her Employment.
- C. An individual who has been convicted of a crime is prohibited by law from holding the position sought by the Applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated or judicially dismissed following probation.
- D. An Employer is prohibited by law from hiring an Applicant who has been convicted of a crime.

SEC. 189.08. CIVIL ENFORCEMENT.

An Applicant or Employee may bring a civil action in a court of competent jurisdiction against an Employer for violation of this article and shall be awarded the penalty set forth in this article and any other legal and/or equitable relief as may be appropriate to remedy the violation. The Applicant or Employee shall not bring a civil action unless or until the Applicant or Employee has reported the alleged violation to the DAA and the administrative enforcement process set forth in Section 189.09 A. has been completed or a hearing officer's decision has been rendered as set forth in Section 189.09 B., whichever is later. The Applicant's or Employee's civil action must be filed within one (1) year of the later of the completion of the DAA's enforcement process or the issuance of the hearing officer's decision.

SEC. 189.09. ADMINISTRATIVE ENFORCEMENT.

A. An Applicant alleging that an Employer has violated the requirements of Sections 189.02, 189.03 or 189.04, or an Employee alleging that an Employer has violated Sections 189.04 and 189.05, may, within one year of the alleged violation, report the alleged violation to the DAA, which shall investigate the complaint. The DAA, as a part of its investigation, may request the Board of Public Works to issue a subpoena for Employer records and documents and for books, papers, records and other items relevant to the enforcement of this article. Whether based upon a complaint or its own investigation of a violation of any of the provisions of this article, where the DAA determines that an Employer has violated this article, the DAA shall issue a written notice to the Employer of the violation, require the Employer to immediately cure the violation and may impose an administrative fine as set forth in this article.

B. The DAA shall establish rules governing the administrative process for investigation and enforcement of alleged violations and appeal of determinations of violations. The rules shall include procedures for: (i) providing notice of an alleged violation to the Employer; (ii) providing the Employer with the opportunity to respond to the notice; (iii) providing notice to the Employer and to the Applicant or Employee of the DAA's determination; and (iv) providing the Employer and the Applicant or Employee the opportunity to appeal the DAA's determination to a hearing officer. The hearing officer's decision shall constitute the City's final decision, and any review of that decision shall be made by the filing of a petition for writ of mandate in the Superior Court of the County of Los Angeles under Section 1094.5 of the Code of Civil Procedure.

C. The DAA shall maintain a record of the complaints it receives alleging violations of this article and the resolution of complaints. The DAA shall compile a summary of the record of the complaints on an annual basis and report that summary to the City Council.

SEC. 189.10. PENALTY/ADMINISTRATIVE FINE SCHEDULE.

A. Penalties and administrative fines for an Employer violation of any provision of this article, other than Sections 189.04 or 189.06, shall be up to \$500 for the first violation, up to \$1,000 for the second violation and up to \$2,000 for the third and subsequent violations.

Penalties and administrative fines for Employer violations of Sections 189.04 or 189.06 shall be up to \$500 for each violation. The provisions of this subsection shall not apply prior to July 1, 2017. Prior to July 1, 2017, the DAA shall only issue written warnings to Employers that violate this article.

B. The amount of the penalty or administrative fine imposed may be based on the willfulness of the Employer's action(s) and other material factors as determined by the DAA.

C. For purposes of determining the penalty or administrative fine to be imposed under this article, Employer violations may be treated as separate violations and subject to the penalty or administrative fine amounts set forth therein.

D. Administrative fines shall be payable to the City of Los Angeles and due within 30 days from the date of notice to the Employer. The failure of any Employer to pay an administrative fine within 30 days shall result in the assessment of a late fee. The amount of the late fee shall be ten percent of the total amount of the administrative fine assessed for each month the amount is unpaid, compounded to include already accrued late administrative fines that remain unpaid.

E. The failure of any Employer to pay amounts due to the City under this article when due shall constitute a debt to the City. The City may file a civil action or pursue any other legal remedy to collect amounts due.

F. The administrative fine paid by an Employer for a violation of this article may be awarded by the City to the Applicant or Employee up to a maximum of \$500 per violation.

G. Nothing in this article shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or any applicable state or federal law.

SEC. 189.11. IMPLEMENTATION.

The DAA may promulgate guidelines and rules consistent with this article for the implementation of the provisions of this article. Guidelines and rules shall have the force and effect of law.

SEC. 189.12. OTHER LEGAL REQUIREMENTS.

This article provides the minimum requirements pertaining to the protection of Applicants and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, requirement, policy or standard, or, with regard to employment, any provision of a collective bargaining agreement, that provides for greater or other rights of or protections for Applicants. This provision shall apply both to laws, regulations, requirements, policies, standards and collective bargaining agreements in existence at the time the article becomes operative, and to those that come into existence thereafter.

SEC. 189.13. CONFLICTS.

Nothing in this article shall be interpreted or applied so as to create any requirement, power or duty in conflict with federal or state law. Specifically, the requirements of this article are not intended to limit, restrict or nullify any duty, right or obligation of an Applicant or an Employer under the Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000e, et seq.) and the enforcement guidelines promulgated by the U.S. Equal Employment Opportunity Commission.

SEC. 189.14. AUTHORITY.

This article is adopted pursuant to the police powers vested in the City under the Constitution of the State of California and the City Charter, and is intended to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which the City or its officers or employees are liable for damages of any kind, including monetary damages, to any person who claims that such breach proximately caused injury. This article does not create a legally enforceable right against the City.

SEC. 189.15. SEVERABILITY.

If any part or provision of this article, including, but not limited to, a section, subsection, paragraph, sentence, phrase or word, or the application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this article. The City Council hereby declares that it would have adopted this article, and each and every section, subsection, paragraph, sentence, phrase and word hereof not declared invalid or unconstitutional, without regard to whether any portion of this article would be subsequently declared invalid or unconstitutional.

CITY OF LOS ANGELES



RULES AND REGULATIONS IMPLEMENTING THE FAIR CHANCE INITIATIVE FOR HIRING (BAN THE BOX) ORDINANCE

EFFECTIVE JANUARY 22, 2017

**Department of Public Works
Bureau of Contract Administration
1149 S. Broadway Street, 3rd Floor
Los Angeles, CA 90015
Phone: (213) 847-1922
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**RULES AND REGULATIONS
IMPLEMENTING THE FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE**

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RULES AND REGULATIONS IMPLEMENTING THE FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE

The Department of Public Works, Bureau of Contract Administration (BCA), promulgates these Rules and Regulations as the Designated Administrative Agency (DAA) pursuant to Section 189.01, 189.09(B) and 189.11 of the Los Angeles Municipal Code (LAMC) and Section 10.48.1, 10.48.8(D) and 10.48.10 of the Los Angeles Administrative Code (LAAC). The BCA may also amend or revise these Fair Chance Initiative for Hiring Ordinance (FCIHO) Rules and Regulations from time to time, consistent with applicable law.

SCOPE OF BCA AUTHORITY

Under the LAMC Sections 189.09 and 189.10 and the LAAC Sections 10.48.8 and 10.48.9, the BCA enforces the FCIHO and imposes penalties and administrative fines for the violation of the FCIHO. When necessary to carry out its function as the DAA, the BCA may conduct inquiries and investigations to determine compliance with the FCIHO.

The effective date of the FCIHO for Private Employers and City Contracts and Subcontracts is January 22, 2017.

RULES AND REGULATIONS IMPLEMENTING THE FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE

REGULATION #1: DEFINITIONS

For purposes of these Rules and Regulations, the definitions set forth in LAMC Section 189.01 and LAAC Section 10.48.1 are incorporated herein by reference. In addition, the following definitions shall apply in these Rules and Regulations.

“Applicant” means an individual who submits an application or other documentation for employment to an Employer regardless of location.

“Criminal History” means information regarding one or more Convictions, transmitted orally or in writing or by any other means, and obtained from any source, including, but not limited to, the individual to whom the information pertains and a Criminal History Report.

A conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. In the State of California, an employer is prohibited from asking about any arrest information, unless it results in a conviction, and otherwise specified.

“Employee” means any individual who performs at least two (2) hours of work on average each week within the geographic boundaries of the City for an Employer. Average week is determined by the last four complete (4) weeks before the position is advertised. This Employee is covered by the FCIHO regardless of whether the Employee is full-time, part-time, seasonal, or temporary.

1. Time spent in the geographic boundaries of the City solely for the purpose of traveling through Los Angeles with no employment-related stops except for refueling or the Employee’s personal meals in not considered time worked within the geographic boundaries.
2. The FCIHO applies to Employees regardless of an Employer’s designation of an Employee as an “independent contractor”; and Employer’s labeling a worker as an “independent contractor” is not conclusive for the purpose of the FCIHO.
3. Telecommuting: An individual who lives in the City and performs work for an Employer from home, including telecommuting, is an Employee under the FCIHO. An individual who works from a home that is outside of the City is not an Employee under the FCIHO, even if the Employee works for a Los Angeles based company, unless the individual also works at least two hours on average per week for the Employer within the geographic boundaries of the City.

“Employer” in these Rules and Regulations refers to a private employer, as defined in LAMC Section 189.01, or a Contractor or Subcontractor, as defined in LAAC Section

RULES AND REGULATIONS

IMPLEMENTING THE FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE

10.48.01. The owner or owners and management and supervisory employees must be counted as Employee if they meet the definition of Employee.

“Equal Employment Opportunity Commission (EEOC) Enforcement Guidance” –

The EEOC is the federal government agency that enforces anti-discrimination laws in employment. In 2012, the EEOC issued a legal guidance on the consideration of applicants’ arrest and conviction history as it relates to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) *et seq.* The EEOC’s recommendations were issued to help employers comply with Title VII. The EEOC developed its guidance to assist and be a resource for Employers to ensure that screening policies are (1) consistent with business necessity and (2) applicants are individually assessed. For additional information, please see the U.S. Equal Employment Opportunity Commission website at www.eeoc.gov.

“Individualized Assessment” means a written determination made by the Employer that there is or is not an effective link between specific aspects of the Applicant’s Criminal History and the risks inherent in the job duties and responsibilities of the employment position. At the minimum, the Employer must consider factors identified in the EEOC Enforcement Guidance.

“Temporary Help Firm” means a business which recruits, hires, and assigns its own employees to perform work at or services for other organizations, for a temporary time period, to support the other organization’s workforce

**RULES AND REGULATIONS
IMPLEMENTING THE FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE**

REGULATION #2: EMPLOYER REQUIREMENTS

A. Application and Interview Procedure

1. An Employer shall not include on any application for Employment any questions that seek the disclosure of an Applicant's Criminal History.

a. Some Employers may use the same online or hard copy application for multiple jurisdictions, including those areas that do not have a Fair Chance law in effect. Although Employers could remove any questions inquiring about an Applicant's Criminal History, Employers could also create a specific application for those positions that would be covered by the City of LA's FCHIO or include a disclaimer that Applicants should not respond to those questions about their Criminal History on the application. Example: For jobs located in the City of Los Angeles, you should not answer this question. Disclaimer should be next to the question asking for a criminal history.

b. Statements such as "Criminal background checks must be passed to be considered for a position", or similar, cannot be included. This would be a violation of the FCIHO.

2. An Employer shall not, at any time or by any means, inquire about or require disclosure of an Applicant's Criminal History, using any mode of communication, including, but not limited to, application forms, interview, and Criminal History Reports, until a Conditional Offer of Employment has been made to the Applicant.

a. The FCIHO does not prevent an Employer from looking into an applicant's background and experience to verify qualifications for an employment position, including asking for resumes and references and performing general internet searches. A violation of the FCIHO would include trying to discover an applicant's conviction history prior to an offer of an employment.

b. The FCIHO allows an Applicant to refuse to respond to any prohibited inquiry or statement without it disqualifying the Applicant from prospective employment.

B. Employer Assessment of Criminal History

1. If an Applicant has been made a Conditional Offer of Employment, at this point, then an Employer is allowed to perform a Criminal History check on the Applicant. The Employer is required to follow any local, state, and federal

RULES AND REGULATIONS

IMPLEMENTING THE FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE

requirements for requesting a review of an individual's Criminal History.

For Temporary Help Firms, the Conditional Offer would be considered when an individual is to be placed in a pool of applicants from which the applicant may be sent to temporary positions.

Note: The FCIHO does not require that an Employer perform a Criminal History check on an Applicant. If an Employer's hiring process did not require a Criminal History check before, the FCIHO does not require that they initiate this process. However, if they do choose to start this process in the future, they will need to follow the requirements of the FCIHO.

2. If the Employer plans to take an Adverse Action, the FCIHO requires that an Employer prepare written documentation including an Individualized Assessment of the Applicant. This Assessment must effectively link specific aspects of the Applicant's Criminal History with risks inherent in the duties of the Employment position sought.

a. The Employer shall, at the least, consider the "Green factors" identified by the EEOC Enforcement Guidance, such as:

i. What is the nature and gravity of the offense? (The harm caused by the criminal conduct should be considered)

ii. How much time has passed since the offense? (Convictions remote in time are less significant than similar more recent ones)

iii. What is the nature of the job duties and responsibilities? (Consider the job's essential functions and the circumstances under and the environment in which the job is performed.)

iv. Are you looking at ONLY convictions? Arrests cannot be considered in employment decisions.

3. If an Employer determines that an Applicant poses an unreasonable risk, then the Employer, prior to withdrawing their offer of employment, must provide, at a minimum, the following documents to the Applicant:

a. A written notification of proposed Adverse Action;

b. Copy of written Assessment performed pursuant to Section 189.03(A);

c. Any other documentation or information supporting the Employer's proposed Adverse Action; and

RULES AND REGULATIONS IMPLEMENTING THE FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE

- d. The date the Applicant is notified should be documented.

C. Fair Chance Process

When an Employer proposes to withdraw their offer of employment based on the Individualized Assessment, they must give the Applicant an opportunity to present additional information through the Fair Chance Process

The Fair Chance Process involves the following:

1. The Employer must hold the Employment position(s) open for at least five (5) business days after the Applicant receives the notification to provide the Employer with any additional information or documentation.
2. The EEOC Enforcement Guidelines provides Applicants with examples of relevant individualized evidence they may submit, such as:
 - a. The facts or circumstances surrounding the offense or conduct;
 - b. The number of offenses for which the individual was convicted;
 - c. Older age at the time of conviction, or release from prison;
 - d. Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
 - e. The length and consistency of employment history before and after the offense or conduct;
 - f. Rehabilitation efforts. Samples of rehabilitation are: certificates or proof of education/training; letters of recommendation from community leaders; certificate of rehabilitation granted by a court;
 - g. Employment or character references and any other information regarding fitness for the particular position; and
 - h. Whether the individual is bonded under a federal, state or local bonding program.
3. If the Applicant does not submit any documentation within the 5 business day time period, the Employer can take the proposed Adverse Action decision without any additional requirements under the ordinance.

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4. If the Applicant submits any documentation, then the Employer must perform a reassessment of the proposed Adverse Action using the same process as the original assessment, but taking into consideration the information and/or documentation submitted by the Applicant. Following the reassessment the Employer should notify the Applicant of the final decision and provide him/her with a copy of the written reassessment.

D. Notice and Posting Requirements for Employers

1. Employers shall state in all solicitations or advertisements seeking Applicants for Employment that the Employer will consider for employment qualified Applicants with Criminal Histories in a manner consistent with the requirements of the FCIHO.

2. Employers shall post a notice informing Applicants of the provisions of the FCIHO in a conspicuous place at every workplace, job site, or other location in the City under the Employer's control and visited by Employment Applicants, and shall send a copy to each labor union or representative or workers with which that have a collective bargaining agreement or other agreement or understanding that is applicable to Employees in the City.

E. Prohibition Against Retaliation

An Employer must comply with LAMC Section 189.05 and LAAC Section 10.48.5 prohibiting retaliation for activities related to the FCIHO.

F. Maintenance of Records

1. Employers are required to maintain Individualized Assessments and any other documentation to demonstrate compliance with the FCIHO. The types of documents required by BCA are all records related to Applicants' Employment applications and the written Individualized Assessment and Fair Chance reassessment performed pursuant to the FCIHO for a period of three (3) years following the receipt of an Applicant's Employment application. If an investigation is initiated by BCA, these documents will be required to be provided to the BCA.

2. If an Employer relied on oral information to form a determination of Adverse Action, the Employer should summarize this information by putting it in writing and maintain it with their employment records. For example, a verbal reference check with former Employer should be documented.

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REGULATION #3: EXCEPTIONS

A. Exception from LAMC Sections 189.02, 189.03, 189.04(A) and LAAC Sections 10.48.2, 10.48.3, and 10.48.4(A):

1. The Employer is required by law to obtain information regarding a Conviction of an Applicant.
2. The Applicant would be required to possess or use a firearm in the course of his or her employment.
3. An individual who has been convicted of a crime is prohibited by law from holding the position sought by the Applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated or judicially dismissed following probation.
4. An Employer is prohibited by law from hiring an Applicant who has been convicted of a crime.

B. Consistency with Federal or State Law - Nothing in the FCIHO shall be interpreted or applied so as to create any requirement, power, or duty in conflict with federal or state law.

C. Employers may assert the application of an exception to defend against liability, and they have the burden of proving the exception by a preponderance of the evidence. The BCA does not assume that an entire employer or industry will receive an exception and will investigate how an exception applies to a particular position or role.

An employer claiming an exception must be able to show that the position falls under LAMC 189.07 or LAAC 10.48.7. BCA requires the Employer to keep a record of their use of such exception for a period of three (3) years following the receipt of an Applicant Employment application. Keeping an exception log will help the Employer respond to BCA's requests for information. The exception log should include the following:

1. Which exception(s) is claimed and
2. How the position fits into the exception and the federal, state, or local law allowing the exception.

BCA recommends Employers availing themselves of exception to the FCIHO should inform Applicants of the exceptions they believe applies.

D. The FCIHO does not apply to the actions of Employers or their agents that are taken pursuant to any state, federal, or local law that requires criminal background checks for

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employment purposes or bars employment based on criminal history. Retaliation and other provisions may still apply.

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REGULATION #4: ENFORCEMENT

A. Civil Enforcement - An Applicant or Employee may bring a civil action in a court of competent jurisdiction against an Employer for violation of the FCIHO within one year of the completion of the administrative enforcement process or a hearing officer's decision has been rendered, whichever is later, and if successful shall be awarded the penalty set forth in the ordinance and any other legal and/or equitable relief as may be appropriate to remedy the violation.

B. Administrative Enforcement

1. Complaint Submittal Process

a. An Applicant or Employee alleging that an Employer has violated the requirements of the FCIHO, within one year of the alleged violation, may report the alleged violation, in writing, to the DAA, which will investigate the complaint.

b. Whether based upon a complaint or its own investigation of a violation of any of the provisions of the FCIHO, where the DAA determines that an Employer has violated the FCIHO, the DAA shall issue a written notice to the Employer of the violation, require the Employer to immediately cure the violation, and impose an administrative fine as set forth in the FCIHO.

2. Complaint Investigation Process

a. When a complaint is received, the DAA will provide notice of the alleged violation to the Employer.

b. The DAA will provide Employer with the opportunity to respond to the notice with proof, documentation, or evidence of compliance.

c. The DAA, as a part of its investigation, may request the Board of Public Works to issue a subpoena for Employer records and documents and for books, papers, records and other items relevant to the enforcement of the FCIHO.

d. Once a determination is made, the DAA will notify the complainant and Employer. At that time the DAA will provide the opportunity to appeal the DAA's determination to a hearing officer. The hearing officer's decision shall constitute the City's final decision, and any review of that decision shall be made by the filing of a petition for writ of mandate in the Superior Court of the County of Los Angeles under Section 1094.5 of the Code of Civil Procedure.

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3. Record Keeping - The DAA shall maintain a record of the complaints it receives alleging violations of the FCIHO and the resolution of complaints. The DAA shall compile a summary of the record of complaints on an annual basis and report the summary to the City Council.

C. City Contractors/Subcontractors

1. In addition to the Civil and Administrative Enforcement listed in Regulation #4 A and B, the DAA has the following enforcement tools for City Contractors and Subcontractors available for violations of the FCIHO:

- a. Request the Awarding Authority to declare a material breach of the Contract and exercise its contractual remedies, which are to include, but not be limited to, termination of the Contract and the return of any monies paid by the City for services not yet rendered
- b. Request that the Awarding Authority document the determination in the Contractor Evaluation required under the LAAC Section 10.39
- c. Require that the Contractor document the determination in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under the LAAC Section 10.40
- d. Request the City Attorney to bring a civil action against the Contractor or Subcontractor seeking an order declaring that the Contractor or Subcontractor violated the FCIHO and /or preventing the Contractor or Subcontractor from future violations of the FCIHO.

D. Penalty/Administrative Fine Schedule

- 1. Private Employers – The Penalty/Administrative Fine Schedule is contained in LAMC Section 189.10.
- 2. City Contractor/Subcontractors – The Penalty/Administrative Fine Schedule is contained in LAAC Section 10.48.9.

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APPENDIX A

The forms listed below have been approved by the BCA for use in conjunction with these FCIHO Rules and Regulations. When the FCIHO Rules and Regulations refer to the use of a form, only the forms listed in this Appendix may be used. Forms may be revised and updated as necessary in which case the updated forms must be used.

NO. FORM NAME

Notice to Applicants and Employees for City Contractors
Notice to Applicants and Employees for Private Employers
Notice to Rescind Employment Offer Sample Letter
Fair Chance Initiative for Hiring Complaint Form (English)
Fair Chance Initiative for Hiring Complaint Form (Spanish)

<p style="text-align: center;">ARTICLE 49: PROCEDURES FOR CONSIDERING ARRESTS AND CONVICTIONS AND RELATED INFORMATION IN EMPLOYMENT AND HOUSING DECISIONS</p>

Sec. 4901.	Policy.
Sec. 4902.	Findings.
Sec. 4903.	Definitions.
Sec. 4904.	Procedures for Use of Criminal History Information in Employment Decisions.
Sec. 4905.	Notice and Posting Requirements for Employers.
Sec. 4906.	Procedures for Use of Criminal History Information in Housing Decisions.
Sec. 4907.	Notice and Posting Requirements for Housing Providers.
Sec. 4908.	Exercise of Rights Protected; Retaliation Prohibited.
Sec. 4909.	Implementation and Enforcement of Employment Provisions.
Sec. 4910.	Employer Records.
Sec. 4911.	Implementation and Enforcement of Housing Provisions.
Sec. 4912.	Housing Provider Records.
Sec. 4913.	Rulemaking.
Sec. 4914.	Outreach.
Sec. 4915.	Other Legal Requirements.
Sec. 4916.	Preemption.
Sec. 4917.	City Undertaking Limited to Promotion of General Welfare.
Sec. 4918.	Severability.

Sec. 4919.	Operative Date.
Sec. 4920.	Conflict with Other City Laws.

Editor's Notes:

See also Administrative Code Ch. 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions."

Ordinance [176-13](#) enacted former Art.49, "Aerial Signs." That article expired pursuant to the terms of its sunset clause (former Sec. 4905) on September 30, 2013.

Ordinance 234-06 repealed former Art. 49, which had pertained to parking station revenue control equipment, in its entirety.

SEC. 4900.

(Former Sec. 4900 added by Ord. [176-13](#), File No. 130661, App. 7/31/2013, Eff. 8/30/2013; expired 9/30/2013)

SEC. 4901. POLICY.

It is the policy of the City and County of San Francisco to enhance public health and safety by reducing recidivism and its associated criminal justice costs and societal costs, and facilitating the successful reintegration into society of persons with arrest and conviction records. This Article is enacted for the purpose of furthering this policy.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4901 added by Ord. [176-13](#), File No. 130661, App. 7/31/2013, Eff. 8/30/2013; expired 9/30/2013)

(Former Sec. 4901 added by Ord. 61-01, File No. 002197, App. 4/20/2001; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4902. FINDINGS.

After public hearings and consideration of testimony and documentary evidence, the Board of Supervisors finds and declares that the health, safety, and well-being of San Francisco's communities depend on increasing access to employment and housing opportunities for people with arrest or conviction records in order for them to effectively reintegrate into the community and provide for their families and themselves. Barriers to these opportunities for people with arrest or conviction records increase recidivism and thereby jeopardize the safety of the public, disrupt the financial and overall stability of affected families and of our communities, and impede the City's achieving its maximum potential of economic growth. Further, establishing procedures for the lawful use of criminal history information in employment and housing decisions can assist employers and housing providers by preventing the automatic exclusion of individuals who may be qualified, and in some cases well-qualified, employees or tenants.

In San Francisco, as across the country, individuals are often plagued by old or minor arrest or conviction records that discourage them from applying for jobs or housing because a "box" on the application requires disclosure of criminal history information that likely will automatically exclude them from consideration. Precise statistics in this area are difficult to come by, but by any measure the problem is major, affecting a large number of individuals and families. By one measure, some sixty-five million Americans have a criminal record that may show up on a routine background check report. In California, it has been estimated that almost one in four adults have arrest or conviction records. Many thousands of people in our local community are directly impacted by barriers to reintegration based on these records.

In today's digital age, there has been widespread proliferation in the use of criminal background checks, with hundreds of companies offering over the internet low-cost criminal background checks. Surveys have shown that as many as ninety percent of employers and eighty percent of private housing providers conduct background checks. And the information that such background checks may yield can have a devastating impact on the employment and housing opportunities of persons with a criminal history, with damaging spillover effects on families and communities. One study found that two-thirds of employers surveyed in five major U.S. cities would not knowingly hire a person with a criminal record, regardless of the offense. Another study found that a criminal record reduces the likelihood of a job callback or offer by nearly fifty percent. Among those seeking assistance from the San Francisco Public Defender's Clean Slate program, a pool of individuals with a criminal record, only about one-third are employed, and the majority of those

employed earn an annual income of \$3,000 or less.

The problems presented by employers and housing providers who use a person's criminal history to deny that person employment or housing opportunities are growing rather than diminishing. In response to this challenge, more than fifty cities and counties in the United States have adopted policies that to one degree or another regulate the inquiry into an individual's criminal history, at least as to individuals employed by those localities. Eleven of those localities apply their policies to those who contract with them. The cities of Philadelphia, Newark, Seattle, and Buffalo have applied their policies to all private employers within their boundaries. At the state level, ten states have adopted policies to address this challenge and four states - Hawaii, Massachusetts, Minnesota and Rhode Island - have applied their policies to private employers. The economic rationale often cited for these reforms is to maximize the pool of talented, qualified workers for employers and to fully utilize the productive capacity of people with prior arrests or convictions, for the improvement of the economy.

Regulating inquiries into an individual's criminal history is gaining traction as one facet of the nationwide effort to reduce the recidivism that leads to serial incarceration. A major rationale for this movement is the growing awareness that incarceration has devastating socioeconomic consequences. Researchers have found that more incarceration has the perverse effect of increasing the crime rate in some communities. Children suffer academically and socially, and have decreased economic mobility, after the incarceration of a parent. Incarceration is also linked to homelessness, impacting public health and safety. Twenty-six percent of homeless people surveyed in San Francisco had been incarcerated within the previous twelve months, and an estimated thirty to fifty percent of parolees in San Francisco are homeless.

On October 1, 2011, San Francisco and the rest of California implemented AB 109, a "Realignment" of California's criminal justice system, which seeks to produce budgetary savings by reducing recidivism and promoting rehabilitation. As stated by Governor Edmund G. Brown, Jr. in signing AB 109, cycling people through the revolving door of "state prisons wastes money, aggravates crowded conditions, thwarts rehabilitation, and impedes local law enforcement supervision." Added by AB 109, Section 3451 of the California Penal Code states that counties must focus on alternatives to incarceration that have a proven track record of reducing recidivism. Moreover, Section 17.5 of the Penal Code states that criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety. Removing unnecessary obstacles to employment and housing that impede reintegration and rehabilitation supports the goals for "Realignment."

Lack of employment and housing are significant causes of recidivism; people who are employed and have stable housing are significantly less likely to be re-arrested. For example, one study of 1,600 individuals recently released from prison in Illinois found that only eight percent of those who were employed for a year committed another crime, compared to the state's average recidivism rate of fifty-four percent. In another study, researchers found that from 1992 to 1997, the slightly more than forty percent of the decline in the overall property crime rate could be attributed to the thirty-three percent decline in the unemployment rate during the same period. Still another study in New York reported that a person without stable housing was seven times more likely to re-offend after returning from prison. There is little doubt that a policy designed to improve the employment and housing prospects of persons with arrest or conviction history will enhance their prospects for becoming productive members of the community, and thereby benefitting all of us.

Policies that encourage reintegration and reduce recidivism can also help reduce criminal justice costs. The Legislative Analyst Office estimated that in 2005-2006, counties in California spent on average about \$28,000 per year to incarcerate an adult in jail and about \$1,250 per year to supervise an adult on probation in the community. One study estimated that in terms of court, prosecution, and law enforcement costs, the County spends an average of \$16,379 to process a person who has committed a drug offense through the criminal justice system. When a person successfully reintegrates and does not return to the criminal justice system, these costs are avoided, allowing scarce public dollars to be reinvested in programs that make our communities stronger and safer.

Not only is it a matter of public safety to ensure that workers have job and housing opportunities, but it is also critical for a stable economy. Economists at the Center for Economic and Policy Research used Bureau of Justice Statistics data to estimate that in 2008, the United States had between 12 and 14 million formerly incarcerated people and people with felonies of working age. Citing this population's greatly reduced job prospects, the researchers estimated that the total male employment that year was reduced by 1.5 to 1.7 percentage points and that the cost to the U.S. economy was between \$57 and \$65 billion in lost output.

The expansion of the criminal justice system and all of its attendant consequences described herein, coupled with the growth of the for-profit criminal background check industry, has created a need for local regulations on the use of arrest and conviction records. On March 29, 2011, the Reentry Council of the City & County of San Francisco, chaired by the Chief Adult Probation Officer, and comprised of that official and the District Attorney, Mayor, Public Defender, and Sheriff urged the enactment of an ordinance to reduce unnecessary barriers to housing and employment for individuals based on arrest or conviction records. This Article is an important part of implementing that general recommendation.

But there are some senses in which this Article is of limited scope. This Article does not intend, and shall not be construed, to require an employer to give preference to anyone or to hire an unqualified person with an arrest or conviction record. Nor does it require a

housing provider to give preference to anyone or to rent to an unqualified tenant with an arrest or conviction record. Moreover, this Article shall not be construed to limit an employer or a housing provider's ability to choose the most qualified and appropriate candidate from applicants for employment or housing.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4902 added by Ord. [176-13](#), File No. 130661, App. 7/31/2013, Eff. 8/30/2013; expired 9/30/2013)

(Former Sec. 4902 added by Ord. 61-01, File No. 002197, App. 4/20/2001; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4903. DEFINITIONS.



New Ordinance Notice

Publisher's Note: This section has been **AMENDED** by new legislation (Ord. [54-18](#), approved 4/13/2018, effective 5/14/2018, operative 10/1/18). The text of the amendment will be incorporated below when the amending legislation is effective.

For the purposes of this Article, the following words and phrases shall mean and include:

"Adverse Action" in the context of employment shall mean to fail or refuse to hire, to discharge, or to not promote any individual; or to limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his/her status as an employee. The "Adverse Action" must relate to employment in whole or substantial part in the City. "Adverse Action" in the context of housing shall mean to evict from, fail or refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or to reduce any tenant subsidy. The "Adverse Action" must relate to real property in the City.

"Affordable Housing" means any residential building in the City that has received funding from the City, connected in whole or in part to restricting rents, the funding being provided either directly or indirectly through funding to another entity that owns, master leases, or develops the building. Affordable Housing also includes "affordable units" in the City as that term is defined in Article 4 of the Planning Code. Projects that are financed using City-issued tax exempt bonds but that receive no other funding from the City or are not otherwise restricted by the City shall not constitute Affordable Housing.

"Arrest" shall mean a record from any jurisdiction that does not result in a conviction and includes information indicating that a person has been questioned apprehended taken into custody or detained, or held for investigation, by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, or tried and acquitted for any felony, misdemeanor or other criminal offense. "Arrest" is a term that is separate and distinct from, and that does not include, "Unresolved Arrest."

"Background Check Report" shall mean any criminal history report, including but not limited to those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement or police agencies, or courts, or by any consumer reporting agency or business, employment screening agency or business, or tenant screening agency or business.

"City" shall mean the City and County of San Francisco.

"Conviction" shall mean a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor; provided that the conviction is one for which the person has been placed on probation, fined, imprisoned, or paroled. Those matters identified in Section 4904(a) and/or Section 4906(a) about which an Employer and/or Housing Provider may not inquire and as to which they may not base an Adverse Action, are not considered "Convictions."

"Conviction History" shall mean information regarding one or more Convictions or Unresolved Arrests, transmitted orally or in writing or by any other means, and obtained from any source, including but not limited to the individual to whom the information pertains and a Background Check Report.

"Directly-Related Conviction" in the employment context shall mean that the conduct for which a person was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing on that person's ability to perform the duties or responsibilities necessarily related to the employment position. In determining whether the conviction or Unresolved Arrest is directly related to the employment position, the Employer shall consider whether the employment position offers the opportunity for the same or a similar offense to occur and whether circumstances leading to the conduct for which the person was convicted or that is the subject

of an Unresolved Arrest will recur in the employment position. "Directly-Related Conviction" in the housing context shall mean that the conduct for which a person was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing. In determining whether the conviction or Unresolved Arrest is directly related to the housing, the Housing Provider shall consider whether the housing offers the opportunity for the same or a similar offense to occur and whether circumstances leading to the conduct for which the person was convicted will recur in the housing, and whether supportive services that might reduce the likelihood of a recurrence of such conduct are available on-site. Those matters identified in Sections 4904(a) and/or Sections 4906(a) about which an Employer and/or Housing Provider may not inquire and as to which they may not base an Adverse Action may not qualify as "Directly-Related Convictions."

"Employer" shall mean any individual, firm, corporation, partnership, labor organization, group of persons, association, or other organization however organized, that is located or doing business in the City, and that employs 20 or more persons regardless of location, including the owner or owners and management and supervisory employees. "Employer" includes job placement and referral agencies and other employment agencies. "Employer" does not include the City and County of San Francisco, any other local governmental unit, or any unit of the state government or the federal government.

"Employment" shall mean any occupation, vocation, job, or work, including but not limited to temporary or seasonal work, part-time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency, or any form of vocational or educational training with or without pay. The physical location of the employment or prospective employment of an individual as to whom Section 4904 applies must be at least eight (8) hours per week within the City.

"Evidence of Rehabilitation or Other Mitigating Factors" may include but is not limited to a person's satisfactory compliance with all terms and conditions of parole and/or probation (however, inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with terms and conditions of parole and/or probation); employer recommendations, especially concerning a person's post-conviction employment; educational attainment or vocational or professional training since the conviction, including training received while incarcerated; completion of or active participation in rehabilitative treatment (e.g., alcohol or drug treatment); letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, or parole/probation officers who have observed the person since his or her conviction; and age of the person at the time of the conviction. Examples of mitigating factors that are offered voluntarily by the person may include but are not limited to explanation of the precedent coercive conditions, intimate physical or emotional abuse, or untreated substance abuse or mental illness that contributed to the conviction.

"Housing Provider" shall mean an entity that owns, master leases, or develops Affordable Housing in the City. "Housing Provider" also includes owners and developers of below market rate housing in the City or "affordable units," as that term is defined in Article 4 of the Planning Code, in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above described entities shall also be considered a Housing Provider.

"HRC" shall mean the Human Rights Commission or any successor department or office. The "Director" of HRC shall mean the department head of the HRC.

"Inquire" shall mean any direct or indirect conduct intended to gather information from or about an applicant, candidate, potential applicant or candidate, or employee, using any mode of communication, including but not limited to application forms, interviews, and Background Check Reports.

"OLSE" shall mean the Office of Labor Standards Enforcement or any successor department or office. The "Director" of OLSE shall mean the head of the OLSE.

"Person" shall mean any individual, person, firm, corporation, business or other organization or group of persons however organized.

"Unresolved Arrest" shall mean an Arrest that is undergoing an active pending criminal investigation or trial that has not yet been resolved. An Arrest has been resolved if the arrestee was released and no accusatory pleading was filed charging him or her with an offense, or if the charges have been dismissed or discharged by the district attorney or the court.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014; amended by Ord. [249-14](#), File No. 140878, App. 12/17/2014, Eff. 1/16/2015)

(Former Sec. 4903 added by Ord. [176-13](#), File No. 130661, App. 7/31/2013, Eff. 8/30/2013; expired 9/30/2013)

(Former Sec. 4903 added by Ord. 61-01, File No. 002197, App. 4/20/2001; amended by Ord. 187-04, File No. 040759, App. 7/22/2004; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)



New Ordinance Notice

Publisher's Note: This section has been **AMENDED** by new legislation (Ord. [54-18](#), approved 4/13/2018, effective 5/14/2018, operative 10/1/18). The text of the amendment will be incorporated below when the amending legislation is effective.

- (a) Regarding applicants or potential applicants for employment, or employees, an Employer shall not, at any time or by any means, inquire about, require disclosure of or if such information is received base an Adverse Action in whole or in part on:
- (1) An Arrest not leading to a Conviction, excepting under circumstances identified in this Section an Unresolved Arrest;
 - (2) Participation in or completion of a diversion or a deferral of judgment program;
 - (3) A Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative, by way of example but not limitation, under California Penal Code sections 1203.4, 1203.4a, or 1203.41;
 - (4) A Conviction or any other determination or adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system;
 - (5) A Conviction that is more than seven years old, the date of Conviction being the date of sentencing, except that this restriction and any limitations imposed in this Article based on the limitation in this subsection (a)(5) shall not apply where the applicant or employee is or will be (A) providing services to or have supervisory or disciplinary authority over a minor, (B) providing services to or have supervisory or disciplinary authority over a "dependent adult," as that phrase is defined in California Welfare and Institutions Code Section 15610.23 or any successor state law, or (C) providing support services or care to or has supervisory authority over a person 65 years or older; or
 - (6) Information pertaining to an offense other than a felony or misdemeanor, such as an infraction, except that an Employer may inquire about, require disclosure of, base an Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or employee's driving record if driving is more than a *de minimis* element of the employment in question.
- Accordingly, the matters identified in this subsection (a) may not be considered in any manner by the Employer.
- (b) The Employer shall not require applicants or potential applicants for employment or employees to disclose on any employment application the fact or details of any Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6). Nor shall the Employer inquire on any employment application about the fact or details of any Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6). An Employer may ask on an employment application for an applicant, potential applicant or employee's written consent for a Background Check so long as the application includes a clear and conspicuous statement that the Employer will not itself conduct or obtain from a third party the Background Check until either after the first live interview with the person or after a conditional offer of employment in accordance with subsection (c) of this Section 4904.
- (c) The Employer shall not require applicants or potential applicants for employment, or employees, to disclose, and shall not inquire into or discuss, their Conviction History or an Unresolved Arrest until either after the first live interview with the person (via telephone, videoconferencing, use of other technology, or in person) or, at the Employer's discretion, after a conditional offer of employment. The Employer may not itself conduct or obtain from a third party a Background Check until either after the first live interview with the person or after a conditional offer of employment.
- (d) Prior to any Conviction History inquiry, the Employer shall provide a copy of the notice described in Section 4905(b) to the applicant or employee.
- (e) Prior to obtaining a copy of a Background Check Report, the Employer shall comply with all state and federal requirements including but not limited to those in the California Investigative Consumer Reporting Agencies Act (ICRAA), California Civil Code sections 1786 *et seq.*, and the Federal Consumer Reporting Act (FCRA), 15 United States Code sections 1681 *et seq.*, to provide notice to the applicant or employee that such a report is being sought.
- (f) In making an employment decision based on an applicant's or employee's Conviction History, an Employer shall conduct an individualized assessment, considering only Directly-Related Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.
- (g) If an Employer intends to base an Adverse Action on an item or items in the applicant or employee's Conviction History, prior

to taking any Adverse Action the Employer shall provide the applicant or employee with a copy of the Background Check Report, if any, and shall notify the applicant or employee of the prospective Adverse Action and the items forming the basis for the prospective Adverse Action.

(h) If, within seven days of the date that the notice described in subsection (g) is provided by the Employer to the applicant or employee, the applicant or employee gives the Employer notice, orally or in writing, of evidence of the inaccuracy of the item or items of Conviction History or any Evidence of Rehabilitation or Other Mitigating Factors, the Employer shall delay any Adverse Action for a reasonable period after receipt of the information and during that time shall reconsider the prospective Adverse Action in light of the information.

(i) Upon taking any final Adverse Action based upon the Conviction History of an applicant or employee, an Employer shall notify the applicant or employee of the final Adverse Action.

(j) It shall be unlawful for any Employer to engage in any communication that is intended and reasonably likely to reach persons who are reasonably likely to seek employment in the City, and that expresses, directly or indirectly, that any person with an Arrest or Conviction will not be considered for employment or may not apply for employment. For purposes of this subsection (j), engaging in a communication includes but is not limited to making a verbal statement or producing or disseminating any solicitation, advertisement, or signage.

(k) Nothing in this Section 4904 shall be construed to prohibit an Employer from observing the conditions of a seniority system or an employee benefit plan, provided such systems or plans are not a subterfuge to evade the purposes or requirements of this Article.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014; amended by Ord. [249-14](#), File No. 140878, App. 12/17/2014, Eff. 1/16/2015)

(Former Sec. 4904 added by Ord. [176-13](#), File No. 130661, App. 7/31/2013, Eff. 8/30/2013; expired 9/30/2013)

(Former Sec. 4904 added by Ord. 61-01, File No. 002197, App. 4/20/2001; amended by Ord. 187-04, File No. 040759, App. 7/22/2004; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4905. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.

(a) The Employer shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment in the City, that the Employer will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of this Article.

(b) The OLSE shall, by the operative date of this Article, publish and make available to Employers, in English, Spanish, Chinese, and all languages spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by Employers in the workplace informing applicants and employees of their rights under this Article. The OLSE shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco workforce. At a minimum the notice described above shall contain the following information:

(1) A description of those matters identified in Section 4904(a) that may not be considered by the Employer under any circumstances;

(2) A description of the restrictions and requirements that Section 4904 imposes on Employers when inquiring about Conviction History in connection with an employment or hiring decision;

(3) The definition of Evidence of Rehabilitation or Other Mitigating Factors provided in Section 4903, and circumstances and timeline under which the applicant or employee has a right to provide such evidence as provided in Section 4904(h); and

(4) The OLSE telephone number and email address that the applicant or employee may use to make a report if he or she believes the Employer has violated any of the provisions of this Article 49.

(c) Employers shall post the notice described in subsection (b) in a conspicuous place at every workplace, job site, or other location in San Francisco under the Employer's control frequently visited by their employees or applicants, and shall send a copy of this notice to each labor union or representative of workers with which they have a collective bargaining agreement or other agreement or understanding, that is applicable to employees in San Francisco. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4905 added by Ord. [176-13](#), File No. 130661, App. 7/31/2013, Eff. 8/30/2013; expired 9/30/2013)

SEC. 4906. PROCEDURES FOR USE OF CRIMINAL HISTORY INFORMATION IN HOUSING DECISIONS.



New Ordinance Notice

Publisher's Note: This section has been **AMENDED** by new legislation (Ord. [54-18](#), approved 4/13/2018, effective 5/14/2018, operative 10/1/18). The text of the amendment will be incorporated below when the amending legislation is effective.

(a) Regarding applicants or potential applicants for Affordable Housing, and their household members, a Housing Provider shall not, at any time or by any means, inquire about, require disclosure of, or if such information is received base an Adverse Action in whole or in part on:

- (1) An Arrest not leading to a Conviction, excepting under circumstances identified in this Section an Unresolved Arrest;
- (2) Participation in or completion of a diversion or a deferral of judgment program;
- (3) A Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative, by way of example but not limitation, under California Penal Code sections 1203.4, 1203.4a, or 1203.41;
- (4) A Conviction or any other determination or adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system;
- (5) A Conviction that is more than seven years old, the date of Conviction being the date of sentencing; or
- (6) Information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

Accordingly, the matters identified in this subsection (a) may not be considered in any manner by the Housing Provider.

(b) The Housing Provider shall not require applicants for Affordable Housing to disclose on any housing application the fact or details of any Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6). Nor shall the Housing Provider inquire on any housing application about the fact or details of any Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6).

(c) The Housing Provider shall not require applicants for Affordable Housing to disclose, and shall not inquire into, Conviction History until the Housing Provider has first determined:

- (1) that the applicant is legally eligible to rent the housing unit; and
- (2) that the applicant is qualified to rent the housing unit under the Housing Provider's criteria for assessing rental history and credit history; provided, however, that this subsection (c)(2) shall apply only if the Housing Provider uses rental history and credit history information in determining qualifications of applicants for housing; and provided further, that this subsection (c)(2) shall not preclude a Housing Provider from obtaining a Background Check Report at the same time as the Housing Provider obtains the rental history report and credit history report for an applicant, so long as the Housing Provider reviews the Background Check Report only after determining based on rental history and credit history that the applicant is qualified to rent the housing unit.

(d) Prior to any Conviction History inquiry, the Housing Provider shall provide a copy of the notice described in Sections 4907(b) and (c) to the applicant.

(e) Prior to obtaining a copy of a Background Check Report, the Housing Provider shall comply with all state and federal requirements including but not limited to those in the California Investigative Consumer Reporting Agencies Act (ICRAA). California Civil Code sections 1786 *et seq.*, and the Federal Consumer Reporting Act (FCRA), 15 United States Code sections 1681 *et seq.*, to provide notice to the applicant that such a report is being sought.

(f) In making a decision related to Affordable Housing based on Conviction History, a Housing Provider shall conduct an individualized assessment, considering only Directly-Related Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

(g) If a Housing Provider intends to base an Adverse Action related to Affordable Housing on an item or items in the applicant's Conviction History, prior to taking any Adverse Action the Housing Provider shall provide the applicant with a copy of the Background Check Report, and shall notify the applicant of the prospective Adverse Action and the items forming the basis for the prospective Adverse Action.

(h) If, within 14 days of the date that the notice described in subsection (g) is provided by the Housing Provider to the applicant, the applicant gives the Housing Provider notice, orally or in writing, of evidence of the inaccuracy of the item or items of Conviction History and/or Evidence of Rehabilitation or Other Mitigating Factors, the Housing Provider shall delay any Adverse Action for a reasonable period after receipt of the information and during that time shall reconsider the prospective Adverse Action in light of the information.

(i) Upon taking any final Adverse Action based upon the Conviction History of an applicant, the Housing Provider shall notify the applicant of the final Adverse Action.

(j) It shall be unlawful for any Housing Provider to engage in any communication related to Affordable Housing that expresses, directly or indirectly, that any person with an arrest or conviction record will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by local, state, or federal law. For purposes of this subsection (j), engaging in a communication includes but is not limited to making a verbal statement or producing or disseminating any solicitation, advertisement, or signage.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014; amended by Ord. [249-14](#), File No. 140878, App. 12/17/2014, Eff. 1/16/2015)

(Former Sec. 4906 added by Ord. 61-01, File No. 002197, App. 4/20/2001; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4907. NOTICE AND POSTING REQUIREMENTS FOR HOUSING PROVIDERS.

(a) The Housing Provider shall state in all solicitations or advertisements for the rental or lease of Affordable Housing placed by the Housing Provider or on behalf of the Housing Provider, that the Housing Provider will consider for tenancy qualified applicants with criminal histories in a manner consistent with the requirements of this Article.

(b) The HRC shall, by the operative date of this Article, publish and make available to Housing Providers, in English, Spanish, and Chinese, and all languages spoken by more than 5% of the San Francisco population, a notice suitable for posting that informs applicants for Affordable Housing of their rights under this Article. The HRC shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco population.

(c) Housing Providers shall post the notice prominently on their website and at any location under their control that is frequently visited by applicants or potential applicants for the rental or lease of Affordable Housing in San Francisco. At a minimum the notice described above shall contain the following information:

(1) A description of those matters identified in Section 4906(a) that may not be considered by the Housing Provider under any circumstances;

(2) A description of the restrictions and requirements that Section 4906 imposes on Housing Providers when inquiring about Conviction History in connection with an application for the rental or lease of Affordable Housing in San Francisco;

(3) The definition of Evidence of Rehabilitation and Other Mitigating Factors provided in Section 4903, and circumstances and timeline under which the applicant or potential applicant has a right to provide such evidence as provided in Section 4906(h); and

(4) The HRC telephone number and email address the applicant or potential applicant may use to make a report if he or she believes the Housing Provider has violated any of the provisions of Article 49.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4907 added by Ord. 61-01, File No. 002197, App. 4/20/2001; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4908. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.

(a) It shall be unlawful for an Employer, Housing Provider, or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Article.

(b) It shall be unlawful for an Employer to refuse to hire an applicant, or to discharge, threaten to discharge, demote, suspend or otherwise take Adverse Action against an employee in retaliation for exercising rights protected under this Article. Such rights include but are not limited to:

- (1) the right to file a complaint or inform any person about any Employer's alleged violation of this Article;
- (2) the right to inform any person about an Employer's alleged violation of this Article;
- (3) the right to cooperate with the OLSE or other persons in the investigation or prosecution of any alleged violation of this Article;
- (4) the right to oppose any policy, practice, or act that is unlawful under this Article; or
- (5) the right to inform any person of his or her rights under this Article.

(c) It shall be unlawful for a Housing Provider to interrupt, terminate, or fail or refuse to initiate or conduct a transaction involving the rental or lease of residential real property, including falsely representing that a residential unit is not available for rental or lease, or otherwise take Adverse Action against a person in retaliation for exercising rights protected under this Article. Such rights include but are not limited to:

- (1) the right to file a complaint or inform any person about any Housing Provider's alleged violation of this Article;
- (2) the right to inform any person about a Housing Provider's alleged violation of this Article;
- (3) the right to cooperate with the HRC or other persons in the investigation or prosecution of any alleged violation of this Article;
- (4) the right to oppose any policy, practice, or act that is unlawful under this Article; or
- (5) the right to inform any person of his or her rights under this Article.

(d) Protections of this Section 4908 shall apply to any person who mistakenly but in good faith alleges violations of this Article.

(e) Taking Adverse Action against a person within 90 days of the exercise of one or more of the rights described in this Section 4908 shall create a rebuttable presumption that such Adverse Action was taken in retaliation for the exercise of those rights.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4908 added by Ord. 61-01, File No. 002197, App. 4/20/2001; amended by Ord. 187-04, File No. 040759, App. 7/22/2004; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4909. IMPLEMENTATION AND ENFORCEMENT OF EMPLOYMENT PROVISIONS.



New Ordinance Notice

Publisher's Note: This section has been **AMENDED** by new legislation (Ord. [54-18](#), approved 4/13/2018, effective 5/14/2018, operative 10/1/18). The text of the amendment will be incorporated below when the amending legislation is effective.

(a) Administrative Enforcement.

(1) With regard to the employment provisions of this Article, the OLSE is authorized to take appropriate steps to enforce this Article and coordinate enforcement, including the investigation of any possible violations of this Article. Where the OLSE has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing. The OLSE shall not find a violation based on an Employer's decision that an applicant or employee's Conviction History is Directly Related, but otherwise may find a violation of this Article, including if the Employer failed to conduct the individualized assessment as required under Section 4904(f).

(2) Where the OLSE determines that a violation has occurred, it may issue a determination and order any appropriate relief, provided however, that for a first violation, or for any violation during the first twelve months following the operative date of this Article, the OLSE must issue warnings and notices to correct, and offer the Employer technical assistance on how to comply with the requirements of this Article. For a second violation, the OLSE may impose an administrative penalty of no more than \$50.00 that the

Employer must pay to the City for each employee or applicant as to whom the violation occurred or continued. Thereafter, for subsequent violations, the penalty may increase to no more than \$100, payable to the City for each employee or applicant whose rights were, or continue to be, violated. Such funds shall be allocated to the OLSE and used to offset the costs of implementing and enforcing this Article.

(3) If multiple employees or applicants are impacted by the same procedural violation at the same time (e.g. all applicants for a certain job opening are asked for their Conviction History on the initial application), the violation shall be treated as a single violation rather than multiple violations.

(4) Where prompt compliance is not forthcoming, the OLSE may refer the action to the City Attorney to consider initiating a civil action pursuant to Subsection (b).

(5) An employee, applicant or other person may report to the OLSE any suspected violation of this Article within 60 days of the date the suspected violation occurred. The OLSE shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee, applicant or person reporting the violation; provided, however, that with the authorization of such person, the OLSE may disclose his or her name and identifying information as necessary to enforce this Article or for other appropriate purposes.

(6) The Director of the OLSE shall establish rules governing the administrative process for determining and appealing violations of this Article. The Rules shall include procedures for:

- (A) providing the Employer with notice that it may have violated this Article;
- (B) providing the Employer with a right to respond to the notice;
- (C) providing the Employer with notice of the OLSE's determination of a violation;

(D) providing the Employer with an opportunity to appeal the OLSE's determination to a hearing officer, who is appointed by the City Controller or his or her designee.

(7) If there is no appeal of the OLSE's determination of a violation, that determination shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the Employer against the City regarding the OLSE's determination of a violation.

(8) If there is an appeal of the OLSE's determination of a violation, the hearing before the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any such hearing, the OLSE's determination of a violation shall be considered *prima facie* evidence of a violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that the OLSE's determination of a violation is incorrect. The hearing officer's decision of the appeal shall constitute the City's final decision. The sole means of review of the City's final decision, rendered by the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of mandate under Section 1094.5 of the California Code of Civil Procedure. The OLSE shall notify the Employer of this right of review after issuance of the City's final decision by the hearing officer.

(b) **Civil Enforcement.** The City may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Article, and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an additional sum as liquidated damages in the amount of \$50.00 to each employee, applicant or other person whose rights under this Article were violated for each day such violation continued or was permitted to continue; appropriate injunctive relief; and, further shall be awarded reasonable attorney's fees and costs.

(c) **Interest.** In any administrative or civil action brought under this Article, the OLSE or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(d) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Article are cumulative.

(e) **Limitation on Actions.** Civil Actions to enforce the employment provisions of this Article must be filed within one year after the date of the violation. This limitations period shall not commence until the date the violation was discovered or could reasonably have been discovered.

(f) **Tracking of Complaints.** OLSE shall maintain a record of the number and types of complaints it receives alleging violations of this Article, and the resolution of those complaints. This information shall be compiled on an annual calendar year basis and reported to the Board of Supervisors by January 31 of each year.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

SEC. 4910. EMPLOYER RECORDS.

- (a) An Employer shall retain records of employment, application forms, and other pertinent data and records required under this Article, for a period of three years, and shall allow the OLSE access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Article.
- (b) An Employer shall provide information to the OLSE, or the OLSE's designee, on an annual basis as may be required to verify the Employer's compliance with this Article.
- (c) In no event shall the OLSE require an Employer to provide any information or documents the disclosure of which would violate state or federal law.
- (d) Where an Employer does not maintain or retain adequate records documenting compliance with this Article or does not allow the OLSE reasonable access to such records, it shall be presumed that the Employer did not comply with this Article, absent clear and convincing evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to provide any and all nonfinancial information to OLSE necessary to fulfill OLSE's responsibilities as the enforcing agency under this Article. With regard to all such information provided by the Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality provisions of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.
- (e) Pursuant to its rulemaking authority under this Article, the OLSE shall adopt rules that establish procedures for Employers to maintain and retain accurate records and to provide annual reporting of compliance to OLSE in a manner that does not require disclosure of any information that would violate State or Federal privacy laws.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4910 added by Ord. 61-01, File No. 002197, App. 4/20/2001; amended by Ord. 197-03, File No. 030633, App. 8/1/2003; Ord. 187-04, File No. 040759, App. 7/22/2004; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4911. IMPLEMENTATION AND ENFORCEMENT OF HOUSING PROVISIONS.



New Ordinance Notice

Publisher's Note: This section has been **AMENDED** by new legislation (Ord. [54-18](#), approved 4/13/2018, effective 5/14/2018, operative 10/1/18). The text of the amendment will be incorporated below when the amending legislation is effective.

(a) Administrative Enforcement.

- (1) With regard to the housing provisions of this Article, the HRC, in consultation with the Mayor's Office of Housing and Community Development, is authorized to take appropriate steps to enforce this Article and coordinate enforcement, including the investigation of any possible violations of this Article. The HRC shall not find a violation based on a Housing Provider's decision that an applicant's Conviction History is Directly Related, but otherwise may find a violation of this Article, including if the Housing Provider failed to conduct the individualized assessment as required under Section 4906(f).
- (2) Where the Director of HRC determines that a violation has occurred, he or she may issue a determination and order any appropriate relief; provided, however, that for a first violation, or for any violation during the first twelve months following the operative date of this Article, the Director must issue warnings and notices to correct, and offer the Housing Provider technical assistance on how to comply with the requirements of this Article. For a second violation, the Director may impose an administrative penalty of no more than \$50.00 that the Housing Provider must pay for each applicant as to whom the violation occurred or continued. Thereafter, for subsequent violations, the penalty may increase to no more than \$100, payable to the City for each applicant whose rights were, or continue to be, violated. Such funds shall be allocated to the HRC and used to offset the costs of implementing and enforcing this Article.
- (3) If multiple applicants are impacted by the same procedural violation at the same time (e.g. all applicants for a certain housing unit are asked for their Conviction History on the initial application), the violation shall be treated as a single violation rather than multiple violations.
- (4) An applicant or other person may report to the HRC any suspected violation of this Article within 60 days of the date the suspected violation occurred. The HRC shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum

extent permitted by applicable laws, the name and other identifying information of the employee, applicant or person reporting the violation; provided, however, that with the authorization of such person, the HRC may disclose his or her name and identifying information as necessary to enforce this Article or for other appropriate purposes.

(5) The Director of the HRC, in consultation with the Mayor's Office of Housing and Community Development, shall establish rules governing the administrative process for determining and appealing violations of this Article. The Rules shall include procedures for:

- (A) providing the Housing Provider with notice that it may have violated this Article;
- (B) providing the Housing Provider with a right to respond to the notice;
- (C) providing the Housing Provider with notice of the Director's determination of a violation;
- (D) providing the Housing Provider with an opportunity to appeal the Director's determination to the HRC.

(6) If there is no appeal of the Director's determination of a violation, that determination shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the Housing Provider against the City regarding the Director's determination of a violation.

(7) If there is an appeal of the Director's determination of a violation, the City Controller or his or her designee shall appoint a person, other than a member of the Commission, to serve as a hearing officer. The hearing before the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any such hearing, the Director's determination of a violation shall be considered *prima facie* evidence of a violation, and the Housing Provider shall have the burden of proving, by a preponderance of the evidence, that the Director's determination of a violation is incorrect.

(8) If the hearing officer finds that the Housing Provider has engaged in conduct in violation of this Article, the hearing officer shall issue an order requiring the Housing Provider to cease and desist from the practice and to offer the housing accommodation to the applicant or applicants under the terms for which the unit was offered to the public. The Housing Provider shall not be required to offer the housing accommodation if the unit has already been rented or leased to a tenant, but the Housing Provider shall be required to offer a comparable unit, if available, to the applicant or applicants.

(9) The decision of the hearing officer shall be final unless the Commission vacates his or her decision on appeal.

(10) Either party may file an appeal of the hearing officer's decision with the Commission. Such an appeal to the Commission from the determination of the hearing officer must be made within 15 days of the mailing of the decision and findings of fact. The appeal shall be in writing and must state the grounds for appellant's claim that there was either error or abuse of discretion on the part of the hearing officer. Each appeal shall be accompanied by a \$15 filing fee; provided, however, the fee shall be waived for an individual who files an affidavit under penalty of perjury stating that he or she is an indigent person who does not have and cannot obtain the money to pay the filing fee without using money needed for the necessities of life. The filing of an appeal will not stay the effect of the hearing officer's decision.

(11) Upon receipt of an appeal, the entire administrative record of the matter, including the appeal, shall be filed with the Commission.

(12) The Commission may in its discretion determine to hear an appeal. In deciding whether to hear an appeal, the Commission shall consider, among other things, fairness to the parties, hardship to either party and promotion of the policies and purposes of this Article. In determining whether to hear an appeal the Commission may also review material from the administrative record of the matter as it deems necessary. A vote of the majority of the Commission shall be required for an appeal to be heard.

(13) In those cases where the Commission is able to determine on the basis of the documents before it that the hearing officer has erred, the Commission may without determining whether to hear the appeal remand the case for further hearing in accordance with its instructions without conducting an appeal hearing. Both parties shall be notified as to the time of the re-hearing, which shall be conducted within 30 days of the remand by the Commission. In those cases where the Commission is able to determine on the basis of the documents before it that the hearing officer's findings contain numerical or clerical inaccuracies, or require clarification, the Commission may continue the hearing for purposes of referring the case back to said hearing officer in order to correct the findings.

(14) Appeals accepted by the Commission shall be heard within 45 days of the filing of an appeal. Within 30 days of the filing of an appeal, both parties shall be notified in writing as to whether the appeal has been accepted. If the appeal has been accepted, the notice shall state the time of the hearing and the nature of the hearing. Such notice must be mailed at least 10 days prior to the hearing.

(15) At the appeal hearing, the parties shall have an opportunity to present oral and written argument in support of their positions. The Commission may in its discretion allow the parties to present additional evidence that was not considered by the hearing officer.

After such hearing and after any further investigation which the Commission may deem necessary, the Commission may, upon hearing the appeal, affirm, reverse or modify the hearing officer's decision or may remand the case for further hearing in accordance with its findings. The Commission's decision must be rendered within 45 days of the completion of the hearing and the parties must be notified of such decision.

(16) In accordance with the above subsection, the Commission shall give the parties written notice of the decision. The notice shall state that the decision is final.

(b) **Civil Enforcement.** The City may bring a civil action in a court of competent jurisdiction against the Housing Provider or other person violating this Article, and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an additional sum as liquidated damages in the amount of \$50.00 to each employee, applicant or other person whose rights under this Article were violated for each day such violation continued or was permitted to continue; appropriate injunctive relief; and, further shall be awarded reasonable attorney's fees and costs.

(c) **Interest.** In any administrative or civil action brought under this Article, the HRC or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(d) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Article are cumulative.

(e) **Limitation on Actions.** Civil Actions to enforce the employment provisions of this Article must be filed within one year after the date of the violation. This limitations period shall not commence until the date the violation was discovered or could reasonably have been discovered.

(f) **Tracking of Complaints.** HRC shall maintain a record of the number and types of complaints it receives alleging violations of this Article, and the resolution of those complaints. This information shall be compiled on an annual calendar year basis and reported to the Board of Supervisors by January 31 of each year.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014; amended by Ord. [249-14](#), File No. 140878, App. 12/17/2014, Eff. 1/16/2015)

(Former Sec. 4911 added by Ord. 61-01, File No. 002197, App. 4/20/2001; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4912. HOUSING PROVIDER RECORDS.

(a) A Housing Provider shall maintain and retain records of tenant application forms, and other pertinent data and records required under this Article, for a period of three years, and shall allow the HRC access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Article.

(b) A Housing Provider shall provide information to the HRC, or the HRC's designee, on an annual basis as may be required to verify the Housing Provider's compliance with this Article.

(c) In no event shall the HRC require a Housing Provider to provide any information or documents the disclosure of which would violate state or federal law.

(d) Where a Housing Provider does not maintain or retain adequate records documenting compliance with this Article or does not allow the HRC reasonable access to such records, it shall be presumed that the Housing Provider did not comply with this Article, absent clear and convincing evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to provide any and all nonfinancial information to the HRC necessary to fulfill the HRC's responsibilities as the enforcing agency under this Article. With regard to all such information provided by the Office of Treasurer and Tax Collector, the HRC shall be subject to the confidentiality provisions of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.

(e) Pursuant to its rulemaking authority under this Article, the HRC shall adopt rules that establish procedures for Housing Providers to maintain and retain accurate records and to provide annual reporting of compliance to the HRC in a manner that does not require disclosure of any information that would violate State or Federal privacy laws.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4912 added by Ord. 61-01, File No. 002197, App. 4/20/2001; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4913. RULEMAKING.

(a) The Director of OLSE shall have authority to adopt regulations and guidelines that implement the employment provisions of this Article or that relate to provisions of this Article of general import or applicability; provided, that the Director of OLSE may adopt regulations or guidelines relating to provisions of general import or applicability only after consultation with the Director of HRC and the Mayor's Office of Housing and Community Development.

(b) A designee of the Director of OLSE shall not have the authority under subsection (a) to adopt regulations or guidelines. But, at the discretion of the Director of OLSE, a designee shall have the authority to conduct hearings leading to the adoption of regulations or guidelines, and to consult with the Director of HRC and the Mayor's Office of Housing and Community Development regarding regulations or guidelines relating to provisions of general import or applicability.

(c) The HRC, in consultation with the Mayor's Office of Housing and Community Development, shall have authority to adopt regulations and guidelines that implement the housing provisions of this Article. The HRC may delegate this function to the Director of HRC.

(d) A designee of the Director of HRC shall not have the authority under subsection (c) to adopt regulations or guidelines. But, at the discretion of the Director of HRC, a designee shall have the authority to conduct hearings leading to the adoption of regulations or guidelines, and to consult with the Director of OLSE and the Mayor's Office of Housing and Community Development regarding regulations or guidelines relating to provisions of general import or applicability.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4913 added by Ord. 61-01, File No. 002197, App. 4/20/2001; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4914. OUTREACH.

(a) The OLSE shall establish a community-based outreach program to conduct education and outreach to employees, applicants, and potential applicants for employment regarding rights and procedures under this Article. The program may be targeted at workers or potential workers in industries or communities where, in the judgment of the OLSE, the need for education and outreach is greatest.

(b) The HRC, in consultation with the Mayor's Office of Housing and Community Development, shall establish a community-based outreach program to conduct education and outreach to applicants and potential applicants for housing regarding rights and procedures under this Article. The program may be targeted at individuals or communities where, in the judgment of the HRC, the need for education and outreach is greatest.

(c) In establishing outreach programs as required by subsections (a) and (b), the OLSE and the HRC may partner with each other and/or with community-based organizations. Nothing in this Section 4914 shall preclude the OLSE or the HRC, by contract or grant, and consistent with other provisions of City law, from engaging the services of such organizations in establishing such community-based outreach programs, participating in such programs, or developing materials for such programs. Nothing in this Section 4914 shall preclude the OLSE or the HRC from combining the outreach programs required by subsections (a) and (b) with other related community outreach programs.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4914 added by Ord. 61-01, File No. 002197, App. 4/20/2001; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4915. OTHER LEGAL REQUIREMENTS.

This Article provides the minimum requirements pertaining to the protection of applicants for employment, potential applicants for employment, employees, and applicants and potential applicants for the rental and lease of residential real property, and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, or, with regard to employment, any provision of a collective bargaining agreement, that provides for greater or other rights of or protections for applicants, potential applicants, or employees. This provision shall apply both to laws, regulations, requirements, policies, standards, and collective bargaining agreements in existence at the time the Article becomes operative, and to those that come into existence thereafter.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

SEC. 4916. PREEMPTION.

The City recognizes that in some circumstances state or federal law governs some of the matters addressed in this Article. Nothing in this Article shall be interpreted or applied by a court or an agency of City government so as to create any requirement, power, or duty in conflict with federal or state law or with a requirement of any government agency, including any agency of City government, implementing federal or state law. Consistent with the foregoing preemption principle, for example, the OLSE and the HRC are authorized to not enforce any provision of this Article upon determining that its application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law. As another example consistent with the foregoing preemption principle, Employers may inquire about criminal convictions outside of the time periods set forth in this Article where required by federal or state law or a government agency implementing federal or state law. These examples are illustrative and do not limit the scope of the preemption principle stated in this Section 4916.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

(Former Sec. 4916 added by Ord. 61-01, File No. 002197, App. 4/20/2001; repealed by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 4917. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In enacting and implementing this Article, the City is assuming an undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Article does not create a legally enforceable right against the City.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

SEC. 4918. SEVERABILITY.

If any part or provision of this Article including but not limited to a section, subsection, paragraph, sentence, phrase, or word, or the application thereof to any person or circumstance, is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

SEC. 4919. OPERATIVE DATE.

This Article shall become operative on 180 days after enactment and shall have prospective effect only, measured from the operative date forward. Enactment occurs when the Mayor signs the ordinance creating the Article, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

(Added by Ord. [17-14](#), File No. 131192, App. 2/14/2014, Eff. 3/16/2014, Oper. 8/13/2014)

SEC. 4920. CONFLICT WITH OTHER CITY LAWS.

If there is a conflict between the requirements of this Article and any City law, rule or regulation existing as of the effective date of Ordinance No. [249-14](#), amending this Article, the requirements of this Article shall prevail.

(Added by Ord. [249-14](#), File No. 140878, App. 12/17/2014, Eff. 1/16/2015)

SAMPLE FORMS

SAMPLE FORMS

CONDITIONAL OFFER OF EMPLOYMENT

NOTICE – PRELIMINARY DECISION TO REVOKE CONDITIONAL OFFER

NOTICE – FINAL DECISION TO REVOKE CONDITIONAL OFFER

* **No Legal Advice Intended:** The follow sample forms are provided for informational and reference purposes only and may not reflect the most current legal developments. These informational materials are not intended, and should not be taken, as legal advice on any particular set of facts or circumstances. You should contact an attorney for advice on your specific legal problems.

YOUR LOGO HERE

Conditional Offer Of Employment

RE: *Conditional Offer of Employment*

Dear [APPLICANT]:

This letter is sent to notify you that [COMPANY NAME] wishes to extend to you the following conditional offer of employment for the position of [APPLIED FOR POSITION]. This position is a [FULL/PART-TIME] position with a starting wage of [STARTING WAGE].

This offer of employment by [COMPANY NAME] is conditioned on the following: **[KEEP ALL THAT APPLY; DELETE OR ADD AS NECESSARY]**

- Evidence and confirmation of educational credentials
- Confirmation of employment history
- Satisfactory professional/personal reference checks
- Satisfactory post-offer employment drug test
- Satisfactory of Department of Motor Vehicles driving records check
- Satisfactory of criminal history background check
- Evidence of eligibility to work in the U.S.

All necessary forms, notifications and testing information will be provided to you in advance.

Please indicate your acceptance of our conditional offer by signing below and returning one copy of the letter, with your original signature, to us no later than [DATE].

Acceptance may be sent via U.S. Mail to: [COMPANY NAME c/o [PERSON OR POSITION] [PHYSICAL ADDRESS], or email at: [EMAIL ADDRESS].

COMPANY CONTACT INFORMATION

YOUR LOGO HERE

If you have any questions about this offer, please contact [CONTACT PERSON] at [PHONE OR EMAIL].

This offer will remain open until [DATE]. Any acceptance postmarked or electronically received after this date will be considered invalid.

We look forward to your response.

Sincerely,

[COMPANY NAME]

I have read and understand the provisions of this conditional offer of employment. I accept the above conditional job offer.

I understand that employment with [COMPANY NAME], if offered, will be considered at will, meaning that, either the company or I may terminate the employment relationship at any time with or without cause or notice.

Date: _____

Signature: _____

COMPANY CONTACT INFORMATION

YOUR LOGO HERE

Notice of Preliminary Decision

RE: *Withdrawal of Conditional Offer of Employment*

Dear [APPLICANT]:

This letter is sent to notify you that the conditional offer of employment extended to you by [COMPANY NAME] on [DATE] for the position of [APPLIED FOR POSITION] is preliminarily withdrawn based on the following conviction(s):

Attached to this notification you will find a copy of the conviction history report providing notice of the above mentioned conviction(s). You have the right to respond to this Notice before our decision concerning this withdrawal is finalized.

In accordance with California law, you have five (5) business days from the date of this Notice to provide a response.

A response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both. **If you dispute the accuracy of the conviction history report and wish to provide evidence to support that assertion, you must notify us in writing before the five (5) business day deadline.**

COMPANY CONTACT INFORMATION

YOUR LOGO HERE

If we receive a written response from you within five (5) business days from the date of this Notice: 1) disputing the accuracy of the conviction history report; and 2) notifying us of the specific steps you are taking to obtain evidence supporting that assertion, you will have an additional five (5) days to provide your response.

Please send written responses to: [COMPANY NAME / CONTACT PERSON, ADDRESS (EMAIL OR PHYSICAL) TO SEND WRITTEN RESPONSE].

If you have questions, please do not hesitate to contact us at [PHONE OR EMAIL].

Sincerely,

[COMPANY NAME/CONTACT]

COMPANY CONTACT INFORMATION

Notice of Final Decision

RE: *Withdrawal of Conditional Offer of Employment*

Dear [APPLICANT]:

This letter is sent to notify you that the conditional offer of employment extended to you by [COMPANY NAME] on [DATE], for the position of [APPLIED FOR POSITION] is withdrawn.

The decision to rescind this offer was made after an initial individualized assessment of the position sought, the disqualifying conviction(s) and further consideration of the response, if any, provided by you.

This is our final decision. [COMPANY NAME] **[CHOSE ONE OF THE FOLLOWING STATEMENTS AND INSERT HERE (omit number):**

1) has no existing procedure by which an applicant may challenge this final decision or request reconsideration.

2) offers the following procedure by which an applicant may challenge this final decision or request reconsideration: [INCLUDE PROCEDURE]].

If you feel you have been denied employment in violation of California law you may file a complaint with the California Department of Fair Employment and Housing:

- Telephone: 800-884-1684 (voice), 800-700-2320 (TTY) or CA's Relay Service at 711
- Email: contact.center@dfeh.ca.gov
- Online: <https://www.dfeh.ca.gov/complaint-process/file-a-complaint/>

Thank you for your interest in applying for a position with [COMPANY NAME].

Sincerely,

[NAME, TITLE]