

ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESOTO, TEXAS, AMENDING CHAPTER 4 TITLED "BUSINESS REGULATIONS" BY ADDING A NEW SECTION 4.2100 TITLED "FAIR CHANCE HIRING" SETTING FORTH POLICIES ESTABLISHING FAIR CHANCE HIRING STANDARDS TO LIMIT EMPLOYERS' CONSIDERATION OF THE CRIMINAL HISTORY ON AN INITIAL JOB APPLICATION; ESTABLISHING AN ADMINISTRATIVE HEARING OFFICER AND PROCEDURES FOR ISSUANCE OF A NOTICE OF VIOLATION; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A CIVIL PENALTY OF A FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, people with criminal records suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits; and

WHEREAS, the City seeks to assist with the successful reintegration of formerly incarcerated people into the community after their release; and

WHEREAS, lack of employment is a principal factor for recidivism, with people who are employed proving significantly less likely to be re-arrested; and

WHEREAS, removal of obstacles to employment for people with criminal records increases public health and safety by providing economic and social opportunities to large groups of citizens; and

WHEREAS, people with criminal records represent a group of job seekers who are ready to contribute and add to the workforce; and

WHEREAS, the City Council finds that denying an employment opportunity to an otherwise qualified person based on the person's criminal history that is not relevant to the job under consideration (i) is unjust; (ii) is detrimental to the health, safety, and welfare of the residents of the City; (iii) prevents the reintegration of individuals into the community; (iv) creates a burden on public resources and law enforcement; (v) contributes to crime and recidivism; and (vi) contributes to unemployment and harms the local economy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DESOTO, TEXAS, THAT:

SECTION 1. The City of DeSoto Code of Ordinances is amended by amending Chapter 4 "Business Regulations" by adding a new Article 4.100 titled "Fair Chance Hiring", to read as follows:

"CHAPTER 4

BUSINESS REGULATIONS

Add New Article 4.2100

ARTICLE 4.2100 FAIR CHANCE HIRING

Sec. 4.2101 Definitions

When used in this Ordinance, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:

Adverse Action means an Employer's refusal to hire, a refusal to promote, or the revocation of an offer of employment or promotion.

Applicant means an individual who submits an Initial Job Application or other documentation for Employment.

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.

Criminal History means an arrest, conviction, plea of nolo contendere, or deferred adjudication arising from a felony criminal accusation, or a Class A or Class B misdemeanor criminal accusation, made under state law, federal law, or a comparable law of another state of the United States.

Criminal History Report means any criminal history report, including, but not limited to, those produced by the Texas Department of Public Safety, National Crime Information Center (NCIC), 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.

Department means the office of the City Manager or City Manager's designee

Employer means a person, company, corporation, firm, labor organization, or association that employs at least 15 individuals whose primary work location is in the City for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The term includes an agency acting on behalf of an employer. The term also includes the City of DeSoto. The term does not include:

- (1) the United States;
- (2) a corporation wholly owned by the government of the United States;
- (3) an organization that is exempt from taxation under Section 501(c) of the Internal Revenue Code;
- (4) the state or a state agency;
- (5) a governmental body (excluding the City of DeSoto) as defined by Section 552.003, Government Code.

Employment means to work for an employer for pay. The term includes full time work, part time work, temporary or seasonal work, contract work, casual or contingent work, work through the services of a temporary or other employment agency, and participation in a vocational, apprenticeship, or educational training program.

Initial Job Application means the first written or oral expression of interest in a job by an individual made in compliance with the employer's established criteria for receiving expressions of interest.

Job means an employment position with an employer for which the employer has solicited or accepted applications and which the employer is currently attempting to fill.

Sec. 4.2102 Applicability

- (a) This article applies to an Employer as defined herein.
- (b) This chapter does not apply to an employment position for which an individual may be disqualified based on the individual's criminal history under a federal, state, or local law, or compliance with legally mandated insurance or bond requirement.
- (c) Nothing in this chapter limits an employer's authority to make a hiring decision for any lawful reason, including the determination that an individual is unsuitable for the job based on an individualized assessment of the individual's criminal history.

Sec. 4.2103 Criminal History in Employment

- (a) It shall be a violation of the article:
 - (1) For an employer to inquire on an initial job application about an applicant's criminal history.

Sec. 4.2104 Investigation

(a) A person may file a complaint with the department and the department may investigate complaints alleging a violation of this article.

(b) A complaint alleging a violation of this article must be filed with the department by or on the behalf of an aggrieved person within sixty (60) days from the date of violation. A submitted complaint shall provide at a minimum the following information:

- (1) Name of company or employer;
- (2) Location of company or employer;
- (3) Date of incident or violation;
- (4) Copy of the job application form alleged to be in violation of this Article; and
- (5) Any additional information required by the department to investigate the complaint.

(c) Upon investigation by the department and a determination of a violation under this Article, the violator will be issued a notice of violation by summons.

Sec. 4.2105 Establishment of an Administrative Hearing Officer and Notice of Violation

(a) The municipal court judge shall serve as the administrative hearing officer and shall preside over the administrative adjudication hearings established under this article.

(b) A violator under this Article is entitled to notice by summons.

(c) A summons issued pursuant to this article must:

- (1) Notify the violator that the person has the right to a hearing;
- (2) Provide information as to the time and place of the hearing;
- (3) State the type, date and location of violation;
- (4) State the penalty range for which the violator may be liable; and
- (5) Provide instructions and the due date for paying the civil penalty.

(d) The person who is issued the summons is not required to attend the hearing under this article.

(e) A violator who fails to appear at a hearing authorized under this article is considered to admit liability for the violation charged. The administrative hearing officer shall issue an order of liability and assess appropriate administrative penalty and costs and fees against the violator.

(f) At a hearing under this article, the administrative hearing officer shall issue an order stating whether the violator is liable for the violation. Upon a finding of liability, the administrative hearing officer shall issue an order:

- (1) Assessing the civil penalty, costs and fees; and
- (2) Requiring abatement of the violation by a specific date.

(g) Upon a finding of liability, the administrative hearing officer may set the date and time for a compliance hearing. A copy of the order shall be provided to the violator as notice of the compliance hearing.

(h) If, at a compliance hearing, the administrative hearing officer finds that the violator has remedied or abated the violation, the administrative hearing officer may reduce the applicable civil penalty, fees and costs.

(i) If, at a hearing under this article, the administrative hearing officer finds the violator is not liable for the violation, the violator shall not be responsible for any civil penalty, cost or fee.

(j) An order issued pursuant to this article may be filed with the municipal court clerk, who shall keep the order in a separate index and file. The order may be recorded using microfilm, microfiche, or data processing techniques.

Sec. 4.2106 Civil Penalty

(a) For a first violation of this chapter, the City shall issue a written warning to the employer found to be in violation informing the employer that a civil penalty may be assessed for a subsequent violation.

(b) An employer found to be in violation of this chapter after receiving a written warning shall be subject to a civil penalty not exceeding five hundred dollars (\$500.00) for each subsequent violation."

SECTION 2. All provisions of the ordinances of the City of DeSoto in conflict with the provisions of this Ordinance be and the same are hereby, repealed, and all other provisions of the ordinances of the City of DeSoto not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the

same shall not affect the validity of this Ordinance as a whole or any part or provision thereof other than the part thereof decided to be unconstitutional, illegal, or invalid.

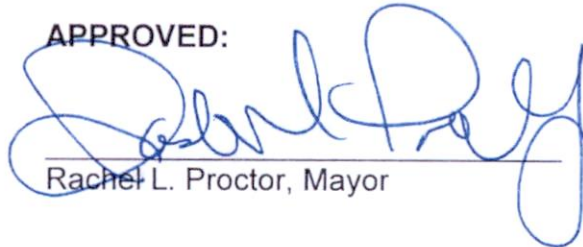
SECTION 4. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Ordinances of the City of DeSoto, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. That any person, firm, or corporation violating any provisions or terms of this Ordinance found to be liable shall be subject to a civil penalty not exceeding Five Hundred Dollars (\$500.00) for each offense.

SECTION 6. This Ordinance shall take effect for the City of DeSoto sixty (60) days after approved and become fully effective on January 1, 2022.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DESOTO, TEXAS ON THIS THE 6TH DAY OF APRIL, 2021.

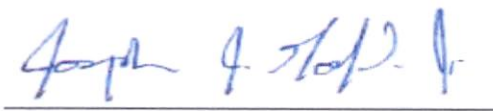
APPROVED:


Rachel L. Proctor, Mayor

ATTEST:


Alicia Thomas, Interim City Secretary

APPROVED AS TO FORM:


Joseph J. Gorfida, Jr., City Attorney
(02-24-2021:TM 120657)