

ORDINANCE NO. _____

An ordinance adding Article 9 to Chapter XVIII of the Los Angeles Municipal Code to limit employers' consideration of the criminal history of applicants for employment.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 9 is added to Chapter XVIII of the Los Angeles Municipal Code to read as follows:

ARTICLE 9

**EMPLOYERS' USE OF CRIMINAL HISTORY FOR CONSIDERATION OF
EMPLOYMENT APPLICATIONS**

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.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting on _____.

HOLLY L. WOLCOTT, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
CURTIS S. KIDDER
Assistant City Attorney

Date 11-28-16

File No. _____