

SUBSTITUTE GENERAL GOV'T COMMITTEE MTG JULY 22, 2020

Item No.: _____

Moved by: _____

Prepared by: Marcy Ingram

Seconded by: _____

Reviewed by: Marcy Ingram

ORDINANCE NO.: _____

AN ORDINANCE TO: (1) ESTABLISH HIRING PRACTICES FOR SHELBY COUNTY GOVERNMENT TO PROMOTE FAIRNESS TO PEOPLE WITH ARREST AND CONVICTION RECORDS SEEKING AN EMPLOYMENT OPPORTUNITY WITH SHELBY COUNTY AND FURTHER ENCOURAGING REHABILITATION OF PEOPLE WITH RECORDS TO STRENGTHEN COMMUNITIES, (2) ~~AMEND THE PURCHASING POLICY TO PROVIDE~~ ENCOURAGE THE AWARDED AUTHORITY TO PROVIDE PREFERENCE POINTS RECOGNITION TO THOSE VENDORS WHO HAVE SUCCESSFULLY COMPLETED THE SHELBY COUNTY RE-ENTRY FOCUSED TRAINING PROGRAM IN FURTHERANCE OF ECONOMIC GROWTH AND (3) ENCOURAGE VENDORS TO “BAN THE BOX” ON THEIR APPLICATIONS FOR EMPLOYMENT IN FURTHERANCE OF ECONOMIC GROWTH. SPONSORED BY COMMISSIONER EDMUND FORD, JR., COMMISSIONER EDDIE S. JONES, JR., COMMISSIONER TAMI SAWYER, COMMISSIONER MICK WRIGHT, CHAIRMAN MARK BILLINGSLEY, COMMISSIONER MICHAEL WHALEY, COMMISSIONER WILLIE F. BROOKS, JR., AND COMMISSIONER MICKELL LOWERY.

WHEREAS, The ability of people with conviction records to reintegrate meaningfully into their communities contributes to reduced recidivism, strengthens families, and leads to safer communities;

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

WHEREAS, People of color are arrested, convicted, and incarcerated in numbers disproportionate to their representation in the population as a whole;

WHEREAS, Many people with records are likely to be unemployed or underemployed;

WHEREAS, People with records represent a workforce with skills to contribute and a desire to add value to their communities;

WHEREAS, Shelby County seeks to assist the meaningful reintegration of people with records and ensure healthier, safer communities;

WHEREAS, Studies indicate that stable employment is one of the best predictors of post-conviction success;

WHEREAS, States, cities, and counties across the country have adopted fair chance hiring policies to remove unfair barriers to employment of people with records; and

WHEREAS, The U.S. Equal Employment Opportunity Commission, to maximize compliance with federal anti-discrimination law, recommends delaying inquiry of a job applicant's conviction history, considering the job-relatedness of the conviction, taking into account the length of time since conviction, and providing an individualized assessment affording the opportunity to correct any inaccuracies and to submit evidence of mitigation or rehabilitation;

WHEREAS, It is the intention of the Shelby County Board of Commissioners to encourage the employment of people previously convicted;

WHEREAS, In furtherance of economic growth, the County created the Shelby County Office of Re-entry (Re-entry) where criminal justice reform advocates assist released prisoners in staying out of prison by providing them with keys to unlock potential and build successful lives after incarceration via job readiness programs such as FOCUSED; and

WHEREAS, The Shelby County Board of Commissioners also encourages vendors doing business with Shelby Government to employ people previously convicted where legally permissible and this body shall find fair and equitable incentives to support employers who make their hiring decisions based on relevant work qualifications consistent with this ordinance, through separate resolution.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, that the Shelby County Board of Commissioners hereby adopts the following policy the Human Resources Department shall follow in order to promote fairness in hiring practices with regards to those individuals with arrest or conviction histories and prohibit inquiry into conviction

history information on all County employment applications unless it is substantially related to potential job duties or required by state or federal law.

Section 1. Definitions and Rules of Employment:

“Applicant” means any person considered for, or who requests to be considered for, employment by the County.

“County” means Shelby County, Tennessee or department, agency, or office thereof.

“Employer” means Shelby County Government.

“Employment” means any occupation, vocation, job, or work for pay including permanent, temporary, seasonal work, or any form of vocational or educational training with or without pay.

Section 2. Considering Conviction History in Employment Decisions

1. All positions require a background check. The employer shall not conduct background checks until after a contingent offer of employment has been given to an applicant.
2. All job announcements and position descriptions shall contain the following information regarding background checks: “This position is subject to a background check for any convictions that have a substantial relationship to potential job duties. Only convictions that are substantially related to potential job duties will be considered and will not automatically disqualify the candidate.”
3. Employer shall not inquire into an applicant’s conviction history prior to a contingent offer of employment being extended.
4. Prior to any background check being administered, the employer shall send the applicant a conditional offer letter of employment, notice of rights under this ordinance, and a request for authorization to conduct a background check.
5. The employer shall not use the following criminal records in relation to a background check: records of arrest not followed by a guilty plea or conviction, sealed, dismissed, or expunged convictions, and juvenile court records.

6. Upon a contingent job offer and if the employer is considering the conviction history of the applicant, the employer shall consider convictions that have a substantial relationship to potential job duties only. If a statute explicitly requires that certain convictions are automatic bars to employment, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a conviction that is substantially related to potential job duties. In determining if a conviction has a substantial relationship to potential job duties, the employer shall consider:

- (a) Whether the conviction is directly related to the potential duties and responsibilities of that employment position, including but not limited to felony convictions and misdemeanor convictions;
- (b) Whether the position works with vulnerable populations including children and the elderly;
- (c) Whether the position is safety sensitive;
- (d) Whether the position involves access to sensitive financial information, financial transactions, or court records;
- (e) Whether the position offers the opportunity for the same or a similar offense to occur;
- (f) Whether circumstances leading to the conduct for which the person was convicted will recur in the position; and
- (g) The length of time since the offense occurred.

7. If an applicant's conviction history contains information that may prevent employment, the employer shall provide the applicant a notice, which includes the following:

- (a) Identifies the conviction item(s) that may prevent employment;
- (b) Provides a copy of the conviction history report, if any;
- (c) Provides examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and

(d) Provides the applicant with an individualized assessment.

8. Criminal history may not prevent employment if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have at least ten (10) business days, after issuance of the notice, to respond with any information that may permit employment, including records challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The employer may hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and any factors recommended by the U.S. Equal Employment Opportunity Commission.

9. Evidence of mitigation or rehabilitation may be established by:

(a) Evidence showing that at least three years or more have elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with terms and conditions of probation or parole;

(b) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.

10. If the employer determines it will not offer employment, the applicant will be informed of the final decision and whether they may be eligible for other positions.

11. If denied employment by the employer, applicants may appeal that decision to the Department of Human Resources.

12. Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential and limited to the hiring manager and relevant human resources personnel, and shall not be used, distributed, or disseminated by the employer or any of its agencies, or its vendors, to any other entity, except as may be required by law.

13. Positions within the Shelby County Sheriff's Office, the Shelby County Trustee's Office, and the Shelby County Division of Corrections are uniquely safety sensitive, or involve routine access to sensitive financial and personal identifying information. This policy shall not apply to the Shelby County

Sheriff's Office, the Shelby County Trustee's Office, or the Shelby County Division of Corrections.

BE IT FURTHER ORDAINED, The Human Resources Department shall submit a report to the County Commission which will review the County's hiring practices in an effort to ensure that people with records are not unreasonably denied employment with the County.

BE IT FURTHER ORDAINED, That the Shelby County Board of Commissioners hereby recommend the adoption of ~~adopts~~ the following ~~procurement~~ policies in order to further economic growth for those persons with arrest or conviction histories and encourage vendors to do the same by utilizing fairness in their hiring practices with regards to those individuals with arrest or conviction histories unless it is substantially related to potential job duties or required by state or federal law.

BE IT FURTHER ORDAINED, That the purpose of this section of the ordinance is to strongly encourage vendors doing business with Shelby County Government to provide equitable opportunities for qualified applicants to be considered for job openings without being precipitately disqualified from consideration based on a history of arrest or conviction that may be irrelevant to the job position.

Section 1. Definition(s):

"Bidder" means any individual, company, or association seeking the award of a contract or subcontract on a project that is funded by the county.

"FOCUSED" means the Office of Re-entry's ten (10) week hands-on technical and vocational program, where released prisoners also "participate in a holistic network of community services designed to restore dignity and confidence [and] have opportunities to gain self-sufficiency through employment or become entrepreneurs." Participants must attend a minimum of 80% of the classes in order to complete this program.

"Vendor" means any vendor, contractor, or supplier of goods and/or services to the Shelby County Government.

Section 2. The County's Consideration of Conviction History in the Procurement Process

1. Shelby County Government has implemented criminal record check policies and practices that are fair to all persons involved and seeking to do business with the County.
2. The awarding authority ~~shall provide ten (10) preference points~~ is encouraged to recognize the entrepreneurial spirit of any bidder who has successfully completed

the FOCUSED program (unless such bidder is prohibited from performing the contract at issue by state or federal law).

Section 3. A Vendor's Consideration of Conviction History in Employment Decisions

1. The County prefers to do business with vendors that have adopted and employ conviction history policies, practices, and standards (Policies) that are consistent with the County's standards outlined in this ordinance.
2. Vendors are encouraged to use employment applications that do not contain a "box" or question of inquiry regarding an applicant's prior criminal history, not requiring an applicant to check or otherwise fill in a "box" or respond to an inquiry regarding an applicant's prior criminal history, unless required by state or federal law or otherwise provided.
3. The awarding authority is requested to review vendors' employment Policies for criminal history for consistency with County employment standards on conviction history. ~~A vendor's Policies that adhere to the County's standards may, at the awarding authority's discretion, result in five (5) preference points in the scoring evaluation process. Additionally, in exchange for the five (5) preference points,~~ The County will be able to evaluate a vendor's execution of the Policies as a part of a performance criteria of said County contracts in consultation with the Office of Human Resources and the Office of Equal Opportunity Compliance.

Section 4. Criminal Record Check Standards for the Shelby County Vendors

1. Shelby County Government has implemented criminal record check policies and practices that are fair to all persons involved and seeks to do business with vendors that maintain substantially similar policies and practices.
2. Vendor job applications are recommended not to contain a "box" or inquiry regarding a job applicant's prior criminal convictions.
3. In connection with the licensing or employment of any person, County vendors are encouraged not to make any inquiry about or to take any adverse action against any person on the basis of any arrest or criminal accusation made against such person, which is not then pending against that person and/or did not result in a conviction against that person which is consistent with the recommendations by the U.S. EEOC on hiring practices for persons with criminal histories.
4. County vendors are encouraged to adhere to a policy in which an applicant's criminal record is not revealed to the individual or individuals, who are making a hiring decision, until a conditional offer of employment has been offered. Further, rejection of an applicant would be considered consistent with County employment

standards on conviction history if the contents of the criminal record have a direct bearing on the nature of employment or the offer of employment would violate state or federal law.

5. The awarding authority is asked to review all vendors' criminal record check Policies for consistency with County standards. ~~If awarded the five (5) preference points for using a “ban the box” employment policy, the awarding authority is recommended to consider any vendor's adverse deviation from same as a possible ground for rescission or revocation of the contract for breaching the terms and conditions for same.~~

BE IT FURTHER ORDAINED, That the various sections, clauses, and words of this ordinance are not intended to conflict with Tennessee Code Annotated, Section 7-51-1802 which reads, in relevant part, that “Except as otherwise provided by state or federal law, a local government shall not, as a condition of doing business [with] the local government or contracting with [same], prohibit an employer from requesting any information on the application for employment or during the process of hiring a new employee.” Tenn. Code Ann. Sect. 7-51-1802 (d).

BE IT FURTHER ORDAINED, That the various sections, clauses, and words of this ordinance are severable, and that any portion deemed unlawful may be elided and shall not affect the remaining portions hereof.

BE IT FURTHER ORDAINED, That this ordinance shall take effect in accordance with the Shelby County Charter, Article II, Section 2.06(C), ~~which requires a simple majority vote of this body~~, the public welfare requiring same.

LEE HARRIS
Mayor of Shelby County, Tennessee

ATTEST:

CLERK OF COUNTY COMMISSION

FIRST READING: _____

SECOND READING: _____

ADOPTED
THIRD READING:
