

1 [Administrative, Police Codes - Criminal History Inquiries for Employment and Housing]

2

3 **Ordinance amending the Administrative and Police Codes to narrow the definition of**  
4 **Property Contracts that are subject to limitations on criminal history inquiries; allow**  
5 **employers and City contractors to inquire about and consider infractions on driving**  
6 **records for positions involving driving; allow employers and City contractors to inquire**  
7 **about and consider a conviction that is more than seven years old for positions**  
8 **involving the supervision or care of minors, dependent adults, or seniors; and provide**  
9 **that the criminal history inquiry restrictions in these Codes prevail over any existing**  
10 **conflicting City law.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
12 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
14 **Board amendment additions** are in double-underlined Arial font.  
15 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
16 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
17 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

19

20 Section 1. The Administrative Code is hereby amended by revising Sections 12T.1,  
21 12T.2, 12T.4, and 12T.8 of Chapter 12T to read as follows:

22 **SEC. 12T.1. DEFINITIONS.**

23 For the purposes of this Chapter, the following words and phrases shall mean and  
24 include:

25 \* \* \* \*

"Contract" shall mean an agreement for public works or improvements to be performed,  
or for goods or services to be purchased or grants to be provided, at the expense of the City

1 or to be paid out of moneys deposited in the treasury or out of trust moneys under the control  
2 or collected by the City; ~~and~~ "Contract" does not include (1) Property Contracts, (2)  
3 agreements entered into pursuant to settlement of legal proceedings, (3) contracts for urgent  
4 litigation expenses as determined by the City Attorney, or (4) contracts for a cumulative  
5 amount of \$5,000 or less per vendor in each fiscal year.

6 \* \* \* \*

7 "Property Contract" shall mean a written agreement, including a lease, permit, license or  
8 easement, through which the City gives to a person or entity the right to exclusively for the exclusive  
9 use or occupancy of real property owned or controlled by the City for a term period of more than  
10 exceeding 29 days in any calendar year, but excluding (1) an agreement with a public entity or  
11 public utility; whether by singular or cumulative instrument (i) for the operation or use by others of  
12 real property owned or controlled by the City for the operation of a business, social, or other  
13 establishment or organization, including leases, concessions, franchises and easements, or (ii) for the  
14 City's use or occupancy of real property owned by others, including leases, concessions, franchises and  
15 easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real  
16 property to the exclusion of others, other than the rights reserved by the fee owner. "Property  
17 Contract" shall not include (2) a revocable at-will use or encroachment permit for the use of or  
18 encroachment on City property regardless of the ultimate duration of such permit, except that  
19 "Property Contract" shall include such permits granted to a private entity for the use of City property  
20 for the purpose of unless the permittee engages in a for-profit activity on the City property; (3)  
21 regulatory permits, including street or public right of way construction, excavation and use permits;  
22 (4). "Property Contract" shall also not include street excavation, street construction or street use  
23 permits, agreements for the use of City right of way where a contracting utility has the power of  
24 eminent domain, or agreements governing the use of City property which constitutes a public  
25 forum for activities that are primarily for the purpose of espousing or advocating causes or

1 ideas and that are generally recognized as protected by the First Amendment to the U.S.  
2 Constitution; or (5) agreements for activities which are primarily recreational in nature, unless the  
3 user engages in a for-profit activity on the City property.

4 \* \* \* \*

5 **SEC. 12T.2. APPLICABILITY OF CHAPTER TO CONTRACTORS AND**  
6 **SUBCONTRACTORS.**

7 The requirements of this Chapter shall only apply to a Contractor's or Subcontractor's  
8 operations to the extent those operations are in furtherance of performing a Contract or  
9 Property Contract with the City. Accordingly, the protections of this Chapter apply only to  
10 applicants and employees who would be or are performing work in furtherance of performing  
11 a Contract or Property Contract with the City. If there is a conflict between the requirements of this  
12 Chapter and any City law, rule or regulation existing as of the effective date of Ordinance No. \_\_\_\_\_,  
13 amending this Chapter, the requirements of this Chapter shall prevail.

14 **SEC. 12T.4. PROCEDURES FOR CONTRACTOR AND SUBCONTRACTOR USE**  
15 **OF CRIMINAL HISTORY INFORMATION IN EMPLOYMENT DECISIONS.**

16 (a) Regarding applicants or potential applicants for employment, or employees, a  
17 Contractor or Subcontractor shall not, at any time or by any means, inquire about, require  
18 disclosure of, or if such information is received base an Adverse Action in whole or in part on:

- 19 (1) An Arrest not leading to a Conviction, excepting under circumstances  
20 identified in this Section an Unresolved Arrest;
- 21 (2) Participation in or completion of a diversion or a deferral of judgment  
22 program;
- 23 (3) A Conviction that has been judicially dismissed, expunged, voided,  
24 invalidated, or otherwise rendered inoperative, by way of example but not limitation, under  
25 California Penal Code sections 1203.4, 1203.4a, or 1203.41;

1 (4) A Conviction or any other determination or adjudication in the juvenile  
2 justice system, or information regarding a matter considered in or processed through the  
3 juvenile justice system; or

4 (5) A Conviction that is more than seven years old, the date of Conviction being  
5 the date of sentencing; or

6 (6) Information pertaining to an offense other than a felony or misdemeanor,  
7 such as an infraction, except that a Contractor or Subcontractor may inquire about, require  
8 disclosure of, base an Adverse Action on, or otherwise consider an infraction or infractions contained  
9 in an applicant or employee's driving record if driving is more than a de minimis element of the  
10 employment in question.

11 Accordingly, the matters identified in this subsection (a) may not be considered in any  
12 manner by the Contractor or Subcontractor.

13 (b) A Contractor or Subcontractor shall not require applicants or potential applicants  
14 for employment or employees to disclose on any employment application the fact or details of  
15 any Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-  
16 (6). Nor shall the Contractor or Subcontractor inquire on any employment application about  
17 the fact or details of any Conviction History, any Unresolved Arrest, or any matter identified in  
18 subsections (a)(1)-(6).

19 (c) A Contractor or Subcontractor shall not require applicants or potential applicants for  
20 employment, or employees, to disclose, and shall not inquire into or discuss, their Conviction  
21 History or an Unresolved Arrest until either after the first live interview with the person (via  
22 telephone, videoconferencing, use of other technology, or in person) or, at the discretion of  
23 the Contractor or Subcontractor, after a conditional offer of employment. A Contractor or  
24 Subcontractor may not ask applicants, potential applicants for employment, or employees for consent  
25

1 to conduct or obtain a Background Check, and may not conduct or obtain a Background Check, until  
2 either after the first live interview with the person or after a conditional offer of employment.

3 (d) Prior to any Conviction History inquiry, the Contractor or Subcontractor shall  
4 provide a copy of the notice described in Section 12T.5(b) to the applicant or employee.

5 (e) Prior to obtaining a copy of a Background Check Report, the Contractor or  
6 Subcontractor shall comply with all state and federal requirements including but not limited to  
7 California Investigative Consumer Reporting Agencies Act (ICRAA), California Civil Code  
8 sections 1786 et seq., and the Federal Consumer Reporting Act (FCRA), 15 United States  
9 Code sections 1681 et seq., to provide notice to the applicant or employee that such a report  
10 is being sought.

11 (f) In making an employment decision based on an applicant's or employee's  
12 Conviction History, a Contractor or Subcontractor shall conduct an individualized assessment,  
13 considering only Directly-Related Convictions, the time that has elapsed since the Conviction  
14 or Unresolved Arrest, and any evidence of inaccuracy or Evidence of Rehabilitation or Other  
15 Mitigating Factors.

16 (g) If a Contractor or Subcontractor intends to base an Adverse Action on an item or  
17 items in the applicant or employee's Conviction History, prior to taking any Adverse Action the  
18 Contractor or Subcontractor shall provide the applicant or employee with a copy of the  
19 Background Check Report, and shall notify the applicant or employee of the prospective  
20 Adverse Action and the item or items forming the basis for the prospective Adverse Action.

21 (h) If, within seven days of the date that the notice described in subsection (g) is  
22 provided by the Contractor or Subcontractor to the applicant or employee, the applicant or  
23 employee gives the Contractor or Subcontractor notice, orally or in writing, of evidence of the  
24 inaccuracy of the item or items of Conviction History or any Evidence of Rehabilitation or  
25 Other Mitigating Factors, the Contractor or Subcontractor shall delay any Adverse Action for a

1 reasonable period after receipt of the information and during that time shall reconsider the  
2 prospective Adverse Action in light of the information.

3 (i) Upon taking any final Adverse Action based upon the Conviction History of an  
4 applicant or employee, a Contractor or Subcontractor shall notify the applicant or employee of  
5 the final Adverse Action.

6 (j) A Contractor or Subcontractor shall not engage in any communication ~~produce or~~  
7 ~~disseminate any solicitation or advertisement~~ that is intended and reasonably likely to reach  
8 persons who are reasonably likely to seek employment to be performed under a Contract or  
9 Property Contract and that expresses, directly or indirectly, that any person with an Arrest or  
10 Conviction will not be considered for employment or may not apply for employment. For  
11 purposes of this subsection (j), engaging in a communication includes but is not limited to making a  
12 verbal statement or producing or disseminating any solicitation, advertisement, or signage.

13 (~~k~~) Nothing in this Section 12T.4 shall be construed to prohibit a Contractor or  
14 Subcontractor from observing the conditions of a seniority system or an employee benefit  
15 plan, provided such systems or plans are not a subterfuge to evade the purposes or  
16 requirements of this Chapter.

17 **SEC. 12T.8. NONAPPLICABILITY, EXCEPTIONS, AND WAIVERS.**

18 \* \* \* \*

19 (e) The waiver authority granted to Contracting Officers in this Section 12T.8 shall be  
20 subject to the requirement that:

21 (1) All proposed waivers must be submitted for approval to the Director of OCA.  
22 All proposed waivers must set forth the reasons the Contracting Officer is requesting the  
23 waiver, what steps were taken to find any entity that complies with this Chapter, and why the  
24 waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering  
25 into Contracts and Property Contracts with persons that do not comply with the requirements

1 of this Chapter to follow certain procedures when inquiring about and using criminal history  
2 information in employment decisions.

3 (2) The Director of OCA shall take action approving or denying a proposed waiver  
4 within 30 days of receiving a notification of the proposed waiver from a contracting officer. If  
5 after 30 days the Director of OCA has taken no action on the proposed waiver, the waiver  
6 shall be deemed approved. ~~and~~

7 (3) The Director of OCA or Contracting Officer shall report to the OLSE whenever  
8 such a waiver is granted within five days of granting the waiver. ~~and~~

9 (f) For any Contract or Property Contract subject to approval by the Board of  
10 Supervisors, the approving resolution shall state whether any waiver or exception under this  
11 Section 12T.8 has been or is proposed to be granted for that contract. ~~and~~

12 \* \* \* \*

13 (j) The Contracting Officer may waive the restriction in subsection (a)(5) of Section 12T.4 and  
14 any limitations imposed in this Chapter based on subsection (a)(5) as to any Contract or Property  
15 Contract, including any grant, where the Contracting Officer certifies in writing that, in the  
16 performance of the agreement, the Contractor or grantee (1) is providing services to or has supervisory  
17 or disciplinary authority over a minor, (2) is providing services to or has supervisory authority over a  
18 “dependent adult,” as that phrase is defined in California Welfare and Institutions Code Section  
19 15610.23 or any successor state law, or (3) is providing support services or care to or has supervisory  
20 authority over a person 65 years or older. The Contracting Officer shall report annually in writing to  
21 the Director of OCA all waivers that he or she grants pursuant to this subsection (j).

22  
23 Section 2. The Police Code is hereby amended by revising Sections 4903, 4904, and  
24 4906 of Article 49, and adding Section 4920 to Article 49, to read as follows:

25 **SEC. 4903. DEFINITIONS.**

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

3 \* \* \* \*

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

10 \* \* \* \*

11 **SEC. 4904. PROCEDURES FOR USE OF CRIMINAL HISTORY INFORMATION IN**  
12 **EMPLOYMENT DECISIONS.**

13 (a) Regarding applicants or potential applicants for employment, or employees, an  
14 Employer shall not, at any time or by any means, inquire about, require disclosure of or if such  
15 information is received base an Adverse Action in whole or in part on:

16 (1) An Arrest not leading to a Conviction, excepting under circumstances  
17 identified in this Section an Unresolved Arrest;

18 (2) Participation in or completion of a diversion or a deferral of judgment  
19 program;

20 (3) A Conviction that has been judicially dismissed, expunged, voided,  
21 invalidated, or otherwise rendered inoperative, by way of example but not limitation, under  
22 California Penal Code sections 1203.4, 1203.4a, or 1203.41;

23 (4) A Conviction or any other determination or adjudication in the juvenile justice  
24 system, or information regarding a matter considered in or processed through the juvenile  
25 justice system;



1 (5) A Conviction that is more than seven years old, the date of Conviction being  
2 the date of sentencing, except that this restriction and any limitations imposed in this Article based  
3 on the limitation in this subsection (a)(5) shall not apply where the applicant or employee is or will be  
4 (A) providing services to or have supervisory or disciplinary authority over a minor, (B) providing  
5 services to or have supervisory or disciplinary authority over a “dependent adult,” as that phrase is  
6 defined in California Welfare and Institutions Code Section 15610.23 or any successor state law, or (C)  
7 providing support services or care to or has supervisory authority over a person 65 years or older; or

8 (6) Information pertaining to an offense other than a felony or misdemeanor,  
9 such as an infraction, except that an Employer may inquire about, require disclosure of, base an  
10 Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or  
11 employee’s driving record if driving is more than a de minimis element of the employment in question.

12 Accordingly, the matters identified in this subsection (a) may not be considered in any  
13 manner by the Employer.

14 (b) The Employer shall not require applicants or potential applicants for employment or  
15 employees to disclose on any employment application the fact or details of any Conviction  
16 History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6). Nor shall the  
17 Employer inquire on any employment application about the fact or details of any Conviction  
18 History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6).

19 (c) The Employer shall not require applicants or potential applicants for employment,  
20 or employees, to disclose, and shall not inquire into or discuss, their Conviction History or an  
21 Unresolved Arrest until either after the first live interview with the person (via telephone,  
22 videoconferencing, use of other technology, or in person) or, at the Employer's discretion,  
23 after a conditional offer of employment. The Employer may not ask applicants, potential applicants  
24 for employment, or employees for consent to conduct or obtain a Background Check, and may not

1 conduct or obtain a Background Check, until either after the first live interview with the person or after  
2 a conditional offer of employment.

3 (d) Prior to any Conviction History inquiry, the Employer shall provide a copy of the  
4 notice described in Section 4905(b) to the applicant or employee.

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

11 (f) In making an employment decision based on an applicant's or employee's  
12 Conviction History, an Employer shall conduct an individualized assessment, considering only  
13 Directly-Related Convictions, the time that has elapsed since the Conviction or Unresolved  
14 Arrest, and any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating  
15 Factors.

16 (g) If an Employer intends to base an Adverse Action on an item or items in the  
17 applicant or employee's Conviction History, prior to taking any Adverse Action the Employer  
18 shall provide the applicant or employee with a copy of the Background Check Report, if any,  
19 and shall notify the applicant or employee of the prospective Adverse Action and the items  
20 forming the basis for the prospective Adverse Action.

21 (h) If, within seven days of the date that the notice described in subsection (g) is  
22 provided by the Employer to the applicant or employee, the applicant or employee gives the  
23 Employer notice, orally or in writing, of evidence of the inaccuracy of the item or items of  
24 Conviction History or any Evidence of Rehabilitation or Other Mitigating Factors, the Employer  
25

1 shall delay any Adverse Action for a reasonable period after receipt of the information and  
2 during that time shall reconsider the prospective Adverse Action in light of the information.

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

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

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

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

18 \* \* \* \*

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

1 \* \* \* \*

2 **SEC. 4920. CONFLICT WITH OTHER CITY LAWS.**

3 *If there is a conflict between the requirements of this Article and any City law, rule or*  
4 *regulation existing as of the effective date of Ordinance No. \_\_\_\_\_, amending this Article, the*  
5 *requirements of this Article shall prevail.*

6  
7 Section 3. Effective Date. This ordinance shall become effective 30 days after  
8 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
9 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
10 of Supervisors overrides the Mayor's veto of the ordinance.

11  
12 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
13 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
14 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
15 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
16 additions, and Board amendment deletions in accordance with the "Note" that appears under  
17 the official title of the ordinance.

18 APPROVED AS TO FORM:  
19 DENNIS J. HERRERA, City Attorney

20 By: \_\_\_\_\_  
21 FRANCESCA GESSNER  
22 Deputy City Attorney

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