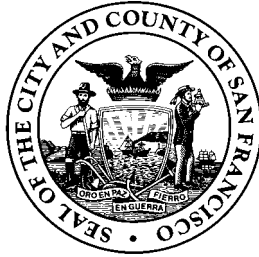



BOARD of SUPERVISORS



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## MEMORANDUM

TO: William Scott, Police Chief, Police Department  
Patrick Mulligan, Director, Office of Labor Standards Enforcements  
(OLSE)  
Trent Rhorer, Executive Director, Human Services Agency

FROM: Victor Young, Assistant Clerk   
Rules Committee

DATE: May 24, 2019

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Rules Committee received the following proposed legislation on May 14, 2019:

**File No. 190479**

**Ordinance amending the Police Code to clarify the content of the notice that employers must post summarizing applicants' and employees' rights under the Fair Chance Ordinance; revise the Beyond the Box in College Admissions Ordinance by changing the enforcing agency from the Office of Labor Standards Enforcement to the Human Rights Commission; adding notice and posting requirements to inform applicants, as defined, of their rights; making penalties payable to applicants; and revising the private right of action requirements.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [victor.young@sfgov.org](mailto:victor.young@sfgov.org).

c: Rowena Carr, Police Department  
Asja Steeves, Police Department  
Deirdre Hussey, Police Department  
Donna Levitt, OLSE  
Krista Ballard, Human Services Agency  
Louise Rainey, Human Services Agency

1 [Police Code - Clarifying Fair Chance Ordinance - Revising Beyond the Box in College  
2 Admissions Ordinance]

3 **Ordinance amending the Police Code to clarify the content of the notice that employers**  
4 **must post summarizing applicants' and employees' rights under the Fair Chance**  
5 **Ordinance; revise the Beyond the Box in College Admissions Ordinance by changing**  
6 **the enforcing agency from the Office of Labor Standards Enforcement to the Human**  
7 **Rights Commission; adding notice and posting requirements to inform applicants, as**  
8 **defined, of their rights; making penalties payable to applicants; and revising the private**  
9 **right of action requirements.**

10  
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 Section 1. Article 49 of the Police Code is hereby amended by revising Section 4905,  
20 to read as follows:

21 **SEC. 4905. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.**

22 (a) The Employer shall state in all solicitations or advertisements for employees that  
23 are reasonably likely to reach persons who are reasonably likely to seek employment in the  
24 City, that the Employer will consider for employment qualified applicants with criminal histories  
25 in a manner consistent with the requirements of this Article 49.

1 (b) The OLSE shall, by the operative date of this Article 49, publish and make  
2 available to Employers, in English, Spanish, Chinese, and all languages spoken by more than  
3 5% of the San Francisco workforce, a notice suitable for posting by Employers in the  
4 workplace informing applicants and employees of their rights under this Article 49. The OLSE  
5 shall update this notice on December 1 of any year in which there is a change in the  
6 languages spoken by more than 5% of the San Francisco workforce. *At a minimum the notice*  
7 *described above shall contain the following information:*

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

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

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

16 ~~————(4) The OLSE telephone number and email address that the applicant or employee may~~  
17 ~~use to make a report if he or she believes the Employer has violated any of the provisions of this Article~~  
18 ~~49.~~

19 (c) Employers shall post the notice described in subsection (b) in a conspicuous place  
20 at every workplace, job site, or other location in San Francisco under the Employer's control  
21 frequently visited by their employees or applicants, and shall send a copy of this notice to  
22 each labor union or representative of workers with which they have a collective bargaining  
23 agreement or other agreement or understanding, that is applicable to employees in San  
24 Francisco. The notice shall be posted in English, Spanish, Chinese, and any language spoken  
25

1 by at least 5% of the employees at the workplace, job site, or other location at which it is  
2 posted.

3  
4 Section 2. Article 50 of the Police Code is hereby amended by revising Section 5003  
5 (including placing the defined term "HRC" in correct alphabetical sequence), adding a new  
6 Section 5005, renumbering existing Sections 5005 and 5006 as Sections 5006 and 5007  
7 respectively and revising those sections, and renumbering existing Sections 5007, 5008, and  
8 5009 as Sections 5008, 5009, and 5010 respectively, to read as follows:

9  
10 **SEC. 5003. DEFINITIONS.**

11 \* \* \* \*

12 "Agency" "HRC" means the ~~Office of Labor Standards Enforcement, Human Rights~~  
13 ~~Commission,~~ or any successor department or office.

14 \* \* \* \*

15 "Director" means the Executive Director of ~~the Office of Labor Standards Enforcement,~~  
16 HRC, or the Director's designee.

17  
18 **SECTION 5005. NOTICE AND POSTING REQUIREMENTS.**

19 (a) Colleges shall state in all applications and recruitment materials that, consistent with the  
20 requirements of this Article 50, the College will not inquire about Applicants' criminal history for the  
21 purpose of deciding whether to offer Admission. For purposes of this subsection (a), "recruitment  
22 materials" means brochures, flyers, or other documents that the College makes available to Applicants.

23 (b) HRC shall, publish and make available to Colleges, in English, Spanish, and Chinese, and  
24 all languages spoken by more than 5% of the San Francisco population, a notice suitable for posting  
25 that informs Applicants of their rights under this Article. HRC shall update this notice on December 1

1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco  
2 population.

3 (c) Colleges shall post the notice referenced in subsection (b) prominently on their website and  
4 at any location under their control that is frequently visited by Applicants or potential Applicants. At a  
5 minimum, the notice shall contain the following information:

6 (1) A description of the restrictions and requirements that Section 5004 imposes on  
7 Colleges when considering Applicants for Admission; and

8 (2) The telephone number and email address that an Applicant, or potential Applicant,  
9 may use to make a report to HRC if the Applicant believes a College has violated any provision of this  
10 Article 50.

11  
12 **SEC. ~~5005~~ 5006. IMPLEMENTATION AND ENFORCEMENT.**

13 (a) ~~The Agency~~ HRC is authorized to take appropriate steps to enforce and coordinate  
14 enforcement of this Article 50, including the investigation of possible violations of this Article.

15 (b) An Applicant or any other person may report to HRC ~~the Agency~~ any suspected  
16 violation of this Article 50. ~~The Agency~~ HRC shall encourage reporting pursuant to this  
17 subsection (b) by keeping confidential, to the maximum extent permitted by applicable laws,  
18 the name and other identifying information of the Applicant or person reporting the violation;  
19 provided, however, that HRC ~~the Agency~~ may disclose the name and identifying information of  
20 the Applicant or person as necessary to enforce this Article 50 or for other appropriate  
21 purposes.

22 (c) The Director shall establish rules governing the administrative process for  
23 determining and appealing violations of this Article 50. The rules shall include procedures for  
24 providing the College with the following:

25 (1) Notice that it may have violated this Article 50;

1 (2) A right to respond to the notice;

2 (3) Notice of the Director's Agency's determination of a violation; and

3 (4) An opportunity to appeal the Director's Agency's determination to a hearing  
4 officer, who is appointed by the Controller.

5 (d) If the College appeals the Director's Agency's determination of a violation, the  
6 Director's Agency's determination shall be considered prima facie evidence of a violation, and  
7 the College shall have the burden of proving, by a preponderance of the evidence, that the  
8 Director's Agency's determination of a violation is incorrect. The hearing officer's decision of  
9 the appeal shall constitute the City's final decision.

10 (e) ~~The Agency~~ The Director may impose upon the College an administrative penalty of  
11 \$250 for each Applicant as to whom a violation of Section 5004(a) or 5005 occurred, which  
12 shall be paid to the Applicant(s).

13 (f) ~~The Agency~~ The Director may impose upon the College an administrative penalty of  
14 \$250 for each day a violation of Section 5004(b) or 5005 occurred or continued, which shall be  
15 deposited in the City's general fund.

16 \* \* \* \*

17 (i) In the event the City brings a civil enforcement action for violation of this Article 50,  
18 any person or association by or with a direct interest in compliance with this Article may join in  
19 that enforcement action as a real party in interest. In the event the City does not institute a  
20 civil enforcement action for violation of this Article, a directly interested person or association,  
21 after receiving confirmation from the City Attorney that the City does not intend to institute a  
22 civil suit, may bring a civil proceeding on its own behalf and on behalf of the City against that  
23 College and seek all remedies available for violation of this Article available under state law,  
24 including but not limited to monetary, injunctive, and declaratory relief. Should actual  
25 damages incurred by such a violation be difficult to determine, liquidated damages may be

1 awarded at the rate of \$1,000 per day of violation, to be distributed equally between a private  
2 plaintiff, if any, and the general fund of the City, unless such liquidated damages award is  
3 found to be so excessive in relation to the violator's resources as to constitute a penalty.

4 (j) A directly interested person or association may institute a civil action under subsection (i)  
5 only if:

6 (1) The directly interested person or association has filed a complaint with HRC;

7 (2) 90 days have passed since the filing of the complaint;

8 (3) After such 90-day period, the directly interested person or association provides  
9 notice to the Director and the City Attorney of the intent to initiate civil proceedings; and

10 (4) The City Attorney has confirmed in writing that the City does not intend to initiate a  
11 civil suit.

12 ~~(k)~~ The Director shall have authority to adopt regulations or guidelines that implement  
13 the provisions of this Article 50.

14 ~~(l)~~ The remedies, penalties, and procedures provided under this Article 50 are  
15 cumulative of any other remedies, penalties, or procedures that may be available to address  
16 conduct that is violative of this Article.

17  
18 **SEC. ~~5006~~ 5007. RECORDKEEPING REQUIREMENTS.**

19 \* \* \* \*

20 (c) Colleges shall allow ~~the Agency~~ HRC access to such records, with appropriate  
21 notice and at a mutually agreeable time, to monitor compliance with the requirements of this  
22 Article 50.

23 (d) It is recommended, but not required, that Colleges retain, for a period of three  
24 years, applications that were begun but not completed.

1 (e) Colleges shall provide information to ~~the Agency HRC~~, or ~~the Agency's HRC's~~  
2 designee, as may be required to verify the College's compliance with this Article 50.

3 (f) In no event shall ~~the Agency HRC~~ require a College to provide any information or  
4 documents the disclosure of which would violate state or federal law.

5 (g) Where a College does not maintain or retain adequate records documenting  
6 compliance with this Article 50 or does not allow ~~the Agency HRC~~ reasonable access to such  
7 records, it shall be presumed that the College did not comply with this Article, absent clear  
8 and convincing evidence otherwise.

9 (h) Pursuant to ~~its~~ the Director's rulemaking authority under this Article 50, the Director  
10 Agency shall adopt rules that establish procedures for ~~Employers~~ Colleges to maintain and retain  
11 accurate records and to provide annual reporting of compliance to ~~the Agency HRC~~ in a  
12 manner that does not require disclosure of any information that would violate State or Federal  
13 privacy laws.

14  
15 **SEC. ~~5007~~ 5008. PREEMPTION.**

16 The City recognizes that in some circumstances state or federal law may govern some  
17 of the matters addressed in this Article 50. Nothing in this Article shall be interpreted or  
18 applied by a court or ~~the Agency HRC~~ or any other part of City government so as to create any  
19 requirement, power, or duty in conflict with federal or state law or with a requirement of any  
20 government agency, including any agency of City government, implementing federal or state  
21 law. Consistent with the foregoing preemption principle, for example, ~~the Agency HRC~~ is  
22 authorized to not enforce any provision of this Article upon determining that its application in a  
23 particular context would conflict with federal or state law or with a requirement of a  
24 government agency implementing federal or state law. Further, this Article does not prevent  
25 Colleges from inquiring about Criminal History where such inquiry is required by federal or



1 state law or a government agency implementing federal or state law, but this Article does  
2 require that such an inquiry be limited to those aspects of inquiries regarding Criminal History  
3 that are necessary to comply with federal or state law. These examples are illustrative and do  
4 not limit the scope of the preemption principle stated in this Section ~~5008~~5007.

5  
6 **SEC. ~~5008~~ 5009. SEVERABILITY.**

7 \* \* \* \*

8  
9 **SEC. ~~5009~~ 5010. CONSTRUCTION.**

10 \* \* \* \*

11  
12 Section 3. Effective and Operative Dates. This ordinance shall become effective 30  
13 days after enactment. This ordinance shall become operative on the effective date, except as  
14 to Section 2, which shall become operative on August 1, 2019 or the effective date whichever  
15 is later. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
17 of Supervisors overrides the Mayor’s veto of the ordinance.

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

7  
8 APPROVED AS TO FORM:  
9 DENNIS J. HERRERA, City Attorney

10 By:



11 \_\_\_\_\_  
BRADLEY A. RUSSI  
Deputy City Attorney

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