[Police Code - Expanding Protections - Fair Chance Ordinance]

Ordinance amending the Police Code to modify provisions of the Fair Chance Ordinance that regulate the use of criminal history in certain employment and housing decisions specifically by providing that employers and affordable housing providers may not use out-of-state criminal convictions or arrests for conduct that is lawful in California related to abortion-related healthcare, drag performances, gender-affirming care, and spontaneous abortion, as defined, in making certain employment or housing-related decisions; increasing administrative penalties for violations; and increasing liquidated damages available in a lawsuit.

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

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

Section 1. Article 49 of the Police Code is hereby amended by revising Sections 4902, 4903, 4904, 4906, 4909, 4910, and 4911 to read as follows:

SEC. 4902. FINDINGS.

After public hearings and consideration of testimony and documentary evidence, the Board of Supervisors finds and declares that the health, safety, and well-being of San Francisco's communities depend on increasing access to employment and housing opportunities for people with arrest or conviction records in order for them to effectively

reintegrate into the community and provide for their families and themselves. Barriers to these opportunities for people with arrest or conviction records increase recidivism and thereby jeopardize the safety of the public, disrupt the financial and overall stability of affected families and of our communities, and impede the City's achieving its maximum potential of economic growth. Further, establishing procedures for the lawful use of criminal history information in employment and housing decisions can assist employers and housing providers by preventing the automatic exclusion of individuals who may be qualified, and in some cases well-qualified, employees or tenants.

In San Francisco, as across the country, individuals are often plagued by old or minor arrest or conviction records that discourage them from applying for jobs or housing because a "box" on the application requires disclosure of criminal history information that likely will automatically exclude them from consideration. Precise statistics in this area are difficult to come by, but by any measure the problem is major, affecting a large number of individuals and families. By one measure, some sixty-five million Americans have a criminal record that may show up on a routine background check report. In California, it has been estimated that almost one in four adults have arrest or conviction records. Many thousands of people in our local community are directly impacted by barriers to reintegration based on these records.

In today's digital age, there has been widespread proliferation in the use of criminal background checks, with hundreds of companies offering over the internet low-cost criminal background checks. Surveys have shown that as many as ninety percent of employers and eighty percent of private housing providers conduct background checks. And the information that such background checks may yield can have a devastating impact on the employment and housing opportunities of persons with a criminal history, with damaging spillover effects on families and communities. One study found that two-thirds of employers surveyed in five major U.S. cities would not knowingly hire a person with a criminal record, regardless of the

offense. Another study found that a criminal record reduces the likelihood of a job callback or offer by nearly fifty percent. Among those seeking assistance from the San Francisco Public Defender's Clean Slate program, a pool of individuals with a criminal record, only about one-third are employed, and the majority of those employed earn an annual income of $3,000 or less.

The problems presented by employers and housing providers who use a person's criminal history to deny that person employment or housing opportunities are growing rather than diminishing. In response to this challenge, more than fifty cities and counties in the United States have adopted policies that to one degree or another regulate the inquiry into an individual's criminal history, at least as to individuals employed by those localities. Eleven of those localities apply their policies to those who contract with them. The cities of Philadelphia, Newark, Seattle, and Buffalo have applied their policies to all private employers within their boundaries. At the state level, ten states have adopted policies to address this challenge and four states – Hawaii, Massachusetts, Minnesota and Rhode Island – have applied their policies to private employers. The economic rationale often cited for these reforms is to maximize the pool of talented, qualified workers for employers and to fully utilize the productive capacity of people with prior arrests or convictions, for the improvement of the economy.

Regulating inquiries into an individual's criminal history is gaining traction as one facet of the nationwide effort to reduce the recidivism that leads to serial incarceration. A major rationale for this movement is the growing awareness that incarceration has devastating socioeconomic consequences. Researchers have found that more incarceration has the perverse effect of increasing the crime rate in some communities. Children suffer academically and socially, and have decreased economic mobility, after the incarceration of a parent. Incarceration is also linked to homelessness, impacting public health and safety.

Twenty-six percent of homeless people surveyed in San Francisco had been incarcerated within the previous twelve months, and an estimated thirty to fifty percent of parolees in San Francisco are homeless.

On October 1, 2011, San Francisco and the rest of California implemented AB 109, a "Realignment" of California's criminal justice system, which seeks to produce budgetary savings by reducing recidivism and promoting rehabilitation. As stated by Governor Edmund G. Brown, Jr. in signing AB 109, cycling people through the revolving door of "state prisons wastes money, aggravates crowded conditions, thwarts rehabilitation, and impedes local law enforcement supervision." Added by AB 109, Section 3451 of the California Penal Code states that counties must focus on alternatives to incarceration that have a proven track record of reducing recidivism. Moreover, Section 17.5 of the Penal Code states that criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety. Removing unnecessary obstacles to employment and housing that impede reintegration and rehabilitation supports the goals for "Realignment."

Lack of employment and housing are significant causes of recidivism; people who are employed and have stable housing are significantly less likely to be re-arrested. For example, one study of 1,600 individuals recently released from prison in Illinois found that only eight percent of those who were employed for a year committed another crime, compared to the state's average recidivism rate of fifty-four percent. In another study, researchers found that from 1992 to 1997, the slightly more than forty percent of the decline in the overall property crime rate could be attributed to the thirty-three percent decline in the unemployment rate during the same period. Still another study in New York reported that a person without stable housing was seven times more likely to re-offend after returning from prison. There is little doubt that a policy designed to improve the employment and housing prospects of persons

with arrest or conviction history will enhance their prospects for becoming productive members of the community, and thereby benefitting all of us.

Policies that encourage reintegration and reduce recidivism can also help reduce criminal justice costs. The Legislative Analyst Office estimated that in 2005-2006, counties in California spent on average about $28,000 per year to incarcerate an adult in jail and about $1,250 per year to supervise an adult on probation in the community. One study estimated that in terms of court, prosecution, and law enforcement costs, the County spends an average of $16,379 to process a person who has committed a drug offense through the criminal justice system. When a person successfully reintegrates and does not return to the criminal justice system, these costs are avoided, allowing scarce public dollars to be reinvested in programs that make our communities stronger and safer.

Not only is it a matter of public safety to ensure that workers have job and housing opportunities, but it is also critical for a stable economy. Economists at the Center for Economic and Policy Research used Bureau of Justice Statistics data to estimate that in 2008, the United States had between 12 and 14 million formerly incarcerated people and people with felonies of working age. Citing this population's greatly reduced job prospects, the researchers estimated that the total male employment that year was reduced by 1.5 to 1.7 percentage points and that the cost to the U.S. economy was between $57 and $65 billion in lost output.

The expansion of the criminal justice system and all of its attendant consequences described herein, coupled with the growth of the for-profit criminal background check industry, has created a need for local regulations on the use of arrest and conviction records. On March 29, 2011, the Reentry Council of the City & County of San Francisco, chaired by the Chief Adult Probation Officer, and comprised of that official and the District Attorney, Mayor, Public Defender, and Sheriff urged the enactment of an ordinance to reduce unnecessary barriers to

housing and employment for individuals based on arrest or conviction records. This Article is an important part of implementing that general recommendation.

Between the time that this Article was first adopted and 2026, reproductive rights and LGBTQ+ rights have come under attack in an unprecedented manner across the nation. In many states, activities that are typically considered basic human rights are being criminalized, including gender affirming care, drag performances, and reproductive healthcare, particularly abortion and miscarriage care. In 2022, the U.S. Supreme Court decision in Dobbs v. Jackson Women's Health Org., 597 U.S. 215, ended fifty years of federal protection for privacy rights, reproductive freedom, and access to abortion. The result is a patchwork of regressive and harmful state legislation across the country, including bans on abortion without exceptions for rape, incest, or the health of a birthing person, and restrictions on access to contraception. Often the state penal codes used for these charges imply that these activities are criminalized to protect health and safety, when they in fact penalize access to life saving healthcare and self-expression. As of May 2026, 13 states have criminalized abortion and abortion-related healthcare, with several states targeting individuals and healthcare providers performing care with serious criminal penalties. Additionally, 27 states have imposed limitations on gender affirming care, of which 24 states impose various civil, criminal, and/or professional licensing penalties on individuals, including physicians, other healthcare providers, and parents of transgender youth seeking or receiving this care. Two states explicitly ban drag performances if minors are present, and another four states have enacted laws regarding drag performances, such as by limiting them from taking place in public or using public funding.

As individuals targeted by these draconian laws seek refuge in other states – such as California – the criminalization of these activities and the convictions that result could lead to unjust denials for affordable housing or employment in San Francisco. Thus, this Article ensures that no one living in San Francisco is adversely impacted while seeking affordable housing or employment due to cruel or discriminatory laws in other states.

~~*But there are some senses in which this Article is of limited scope.*~~ This Article does not intend, and shall not be construed, to require an employer to give preference to anyone or to hire an unqualified person with an arrest or conviction record. Nor does it require a housing provider to give preference to anyone or to rent to an unqualified tenant with an arrest or conviction record. Moreover, this Article shall not be construed to limit an employer or a housing provider's ability to choose the most qualified and appropriate candidate from applicants for employment or housing.

SEC. 4903. DEFINITIONS.

For the purposes of this Article 49, the following words and phrases shall mean and include:

"Abortion-Related Healthcare Conviction" shall mean an out-of-state Conviction or Unresolved Arrest for conduct that is lawful under California law, and has the primary aim of seeking, performing, providing, receiving, or facilitating the services by or of a physician or other medical professional to terminate a pregnancy.

"Adverse Action" in the context of employment shall mean to fail or refuse to hire, to discharge, or to not promote any individual; or to limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his/her status as an employee. The "Adverse Action" must relate to employment in whole or substantial part in the City. "Adverse Action" in the context of housing shall mean to evict from, fail or refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or to reduce any tenant subsidy. The "Adverse Action" must relate to real property in the City.

"Affordable Housing" means any residential building in the City that has received funding from the City, connected in whole or in part to restricting rents, the funding being provided either directly or indirectly through funding to another entity that owns, master leases, or develops the building. Affordable Housing also includes "affordable units" in the City as that term is defined in Article 4 of the Planning Code. Projects that are financed using City-issued tax exempt bonds but that receive no other funding from the City or are not otherwise restricted by the City shall not constitute Affordable Housing.

"Arrest" shall mean a record from any jurisdiction that does not result in a conviction and includes information indicating that a person has been questioned apprehended taken into custody or detained, or held for investigation, by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, or tried and acquitted for any felony, misdemeanor or other criminal offense. "Arrest" is a term that is separate and distinct from, and that does not include, "Unresolved Arrest."

"Background Check Report" shall mean 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, employment screening agency or business, or tenant screening agency or business.

"City" shall mean the City and County of San Francisco.

"Conviction" shall mean 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. Those matters identified in Section 4904(a) and/or Section 4906(a) about which an Employer and/or Housing Provider may not inquire and as to which they may not base an Adverse Action, are not considered "Convictions."

"Conviction History" shall mean information regarding one or more Convictions or Unresolved Arrests, 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 Background Check Report.

"Directly-Related Conviction" in the employment context shall mean that the conduct for which a person was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing on that person's ability to perform the duties or responsibilities necessarily related to the employment position. In determining whether the conviction or Unresolved Arrest is directly related to the employment position, the Employer shall consider *the nature and gravity of the offense,* whether the employment position offers the opportunity for the same or a similar offense to occur, and whether circumstances leading to the conduct for which the person was convicted or that is the subject of an Unresolved Arrest will recur in the employment position. "Directly-Related Conviction" in the housing context shall mean that the conduct for which a person was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing on the safety of persons or property, given the nature of the housing. In determining whether the conviction or Unresolved Arrest is directly related to the housing, the Housing Provider shall consider *the nature and gravity of the offense,* whether the housing offers the opportunity for the same or a similar offense to occur and whether circumstances leading to the conduct for which the person was convicted will recur in the housing, and whether supportive services that might reduce the likelihood of a recurrence of such conduct are available on-site. Those matters identified in Sections 4904(a) and/or Sections 4906(a) about which an Employer and/or Housing Provider may not inquire and as to which they may not base an Adverse Action may not qualify as "Directly-Related Convictions." *A Conviction or Unresolved Arrest that the record of conviction and/or additional information submitted by an applicant or employee demonstrates is an Abortion-Related Healthcare Conviction, a*

Drag Conviction, a Gender Affirming Care Conviction, and/or a Spontaneous Abortion-Related Conviction shall not be a "Directly-Related Conviction."

"Drag-Related Conviction" shall mean an out-of-state Conviction or Unresolved Arrest for conduct that is lawful under California law and that is related to a public, artistic performance characterized by exaggerated displays of femininity or masculinity, in some instances demonstrated by wearing clothing associated with a different gender than the person's assigned gender at birth.

"Employer" shall mean 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 five or more persons regardless of location, including the owner or owners and management and supervisorial employees. "Employer" includes job placement and referral agencies and other employment agencies.

"Employer" does not include the City and County of San Francisco, any other local governmental unit, or any unit of the state government or the federal government.

"Employment" shall mean any occupation, vocation, job, or work, 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. The physical location of the employment or prospective employment of an individual as to whom Section 4904 applies must be at least eight hours per week within the City.

"Evidence of Rehabilitation or Other Mitigating Factors" may include but is not limited to a person's satisfactory compliance with all terms and conditions of parole and/or probation (however, inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with terms and conditions of parole and/or probation); employer recommendations, especially concerning a person's post-conviction employment; educational attainment or vocational or professional training since the conviction, including training

received while incarcerated; completion of or active participation in rehabilitative treatment (e.g., alcohol or drug treatment); letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, or parole/probation officers who have observed the person since his or her conviction; and age of the person at the time of the conviction. Examples of mitigating factors that are offered voluntarily by the person may include but are not limited to explanation of the precedent coercive conditions, intimate physical or emotional abuse, or untreated substance abuse or mental illness that contributed to the conviction.

"Gender Affirming Care Conviction" shall mean an out-of-state Conviction or Unresolved Arrest for conduct that is lawful under California law, and that is related to seeking, performing, providing, receiving, or facilitating medical care, support, or advocacy for the purpose of addressing disparities between any person's gender identity and their physiology or perceived gender identity, including but not limited to hormone replacement therapy, surgical procedures, and changes to a person's name or gender marker. This includes a Conviction for use of a gendered facility that corresponds with one's gender identity and/or playing sports on a team that corresponds with one's gender identity.

"Housing Provider" shall mean an entity that owns, master leases, or develops Affordable Housing in the City. "Housing Provider" also includes owners and developers of below market rate housing in the City or "affordable units," as that term is defined in Article 4 of the Planning Code, in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above described entities shall also be considered a Housing Provider.

"HRC" shall mean the Human Rights Commission or any successor department or office. The "Director" of HRC shall mean the department head of the HRC.

"Inquire" shall mean any direct or indirect conduct intended to gather information from or about an applicant, candidate, potential applicant or candidate, or employee, using any mode of communication, including but not limited to application forms, interviews, and Background Check Reports.

"OLSE" shall mean the Office of Labor Standards Enforcement or any successor department or office. The "Director" of OLSE shall mean the head of the OLSE.

"Person" shall mean any individual, person, firm, corporation, business or other organization or group of persons however organized.

"Spontaneous Abortion-Related Conviction" shall mean an out-of-state Conviction or Unresolved Arrest for conduct that is lawful under California law, and is related to actions taken by a person regarding their own noninduced pregnancy loss before 20 weeks of pregnancy, also known as a miscarriage, or seeking, performing, providing, receiving, or facilitating the services by or of a physician or other medical professional related to such type of pregnancy loss. This includes a Conviction for conduct related to a stillbirth, which is pregnancy loss after 20 weeks of pregnancy.

"Unresolved Arrest" shall mean an Arrest that is undergoing an active pending criminal investigation or trial that has not yet been resolved. An Arrest has been resolved if the arrestee was released and no accusatory pleading was filed charging him or her with an offense, or if the charges have been dismissed or discharged by the district attorney or the court.

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

* * * *

(f) In making an employment decision based on an applicant's or employee's Conviction History, an Employer shall conduct an individualized assessment, considering only

Directly-Related Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

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

(h) If, within seven days of the date that the notice described in subsection (g) is provided by the Employer to the applicant or employee, the applicant or employee gives the Employer notice, orally or in writing, of evidence of the inaccuracy of the item or items of Conviction History or any Evidence of Rehabilitation or Other Mitigating Factors, the Employer *shall provide a response confirming receipt of the notice from the applicant or employee within 14 days,* shall delay any Adverse Action for a reasonable period after *providing a response to confirm* receipt of the information, and during that time shall reconsider the prospective Adverse Action in light of the information. *If, in the notice given to the Employer by the applicant or employee, the applicant or employee makes a reasonable factual showing that the proposed Adverse Action is based solely on a conviction that is not a Directly-Related Conviction, the Employer must withdraw the Adverse Action.*

(i) Upon taking any final Adverse Action based upon the Conviction History of an applicant or employee, an Employer shall notify the applicant or employee of the final Adverse Action *within 30 days of receipt of notice received from applicant or employee in (h) or, if the applicant or employee does not provide notice contemplated by (h), within 30 days of the notice provided by the Employer in (g).*

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

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

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

* * * *

(g) If a Housing Provider intends to base an Adverse Action related to Affordable Housing on an item or items in the applicant's Conviction History, prior to taking any Adverse Action the Housing Provider shall provide the applicant with a copy of the Background Check Report, and shall notify the applicant of the prospective Adverse Action and the items forming the basis for the prospective Adverse Action.

(h) If, within 14 days of the date that the notice described in subsection (g) is provided by the Housing Provider to the applicant, the applicant gives the Housing Provider notice, orally or in writing, of evidence of the inaccuracy of the item or items of Conviction History and/or Evidence of Rehabilitation or Other Mitigating Factors, the Housing Provider *shall provide a response confirming receipt of the notice from the applicant within 14 days,* shall delay

any Adverse Action for a reasonable period after *providing a response to confirm* receipt of the information and during that time shall reconsider the prospective Adverse Action in light of the information. *If, in the notice given to the Housing Provider by the applicant, the applicant makes a reasonable factual showing that the proposed Adverse Action is based solely on a conviction that is not a Directly-Related Conviction, the Housing Provider must withdraw the Adverse Action.*

(i) Upon taking any final Adverse Action based upon the Conviction History of an applicant, the Housing Provider shall notify the applicant of the final Adverse Action *within 30 days of receipt of notice received from applicant in (h), or, if the applicant does not provide notice contemplated by (h), within 30 days of the notice provided by the Housing Provider in (g)*.

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

SEC. 4909. IMPLEMENTATION AND ENFORCEMENT OF EMPLOYMENT PROVISIONS.

(a) **Administrative Enforcement**.

(1) With regard to the employment provisions of this Article 49, the OLSE is authorized to take appropriate steps to enforce this Article and coordinate enforcement, including the investigation of any possible violations of this Article. Where the OLSE has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full

investigation or hearing. The OLSE ~~*shall not find a violation based on an Employer's decision that an applicant or employee's Conviction History is Directly Related, but otherwise*~~ may find a violation of this Article~~*, including if the*~~ *based on a finding that an* Employer failed to conduct the individualized assessment as required under Section 4904(f) *or that an Employer issued an Adverse Decision based in whole or in part on an employee or applicant's Abortion-Related Healthcare Conviction, Drag Conviction, Gender Affirming Care Conviction, or Spontaneous Abortion-Related Conviction as prohibited by Section 4904(f). The OLSE shall not find a violation based on an Employer's determination that an applicant or employee's Conviction, other than an Abortion-Related Healthcare Conviction, Drag Conviction, Gender Affirming Care Conviction, or Spontaneous Abortion-Related Conviction, is a Directly-Related Conviction.*

~~*(2) Where the OLSE determines that a violation has occurred, it may issue a determination and order any appropriate relief, provided however, that for a first violation, or for any violation during the first twelve months following the operative date of this Article, the OLSE must issue warnings and notices to correct, and offer the Employer technical assistance on how to comply with the requirements of this Article. For a second violation, the OLSE may impose an administrative penalty of no more than $50.00 that the Employer must pay to the City for each employee or applicant as to whom the violation occurred or continued. Thereafter, for subsequent violations, the penalty may increase to no more than $100, payable to the City for each employee or applicant whose rights were, or continue to be, violated. Such funds shall be allocated to the OLSE and used to offset the costs of implementing and enforcing this Article.*~~

~~*(3)*~~*(2)* If multiple employees or applicants are impacted by the same procedural violation at the same time (e.g. all applicants for a certain job opening are asked for their Conviction History on the initial application), the violation shall be treated as a single violation rather than multiple violations.

~~(4)~~(3) Where prompt compliance is not forthcoming, the OLSE may refer the action to the City Attorney to consider initiating a civil action pursuant to Subsection (b).

~~*(5) Subsections (a)(2), (a)(3), and (a)(4) apply to violations occurring prior to the effective date of the ordinance in Board of Supervisors File No. 171170 amending this Section 4909. Subsections (a)(6) and (a)(7) apply to violations occurring on or after the effective date of that ordinance.*~~

~~(6)~~(4) Where the OLSE determines that a violation has occurred, it may issue a determination and order any appropriate relief. If multiple employees or applicants are impacted by the same procedural violation at the same time (e.g., all applicants for a certain job opening are asked for their Conviction History on the initial application), the violation shall be treated as one violation for each impacted employee or applicant.

~~(7)~~(5) For a first violation ~~*on or after the effective date of the ordinance in Board of Supervisors File No. 171170 amending this Section 4909*~~, the OLSE may impose an administrative penalty of no more than ~~$500~~ $1,000 for each employee or applicant as to whom the violation occurred or continued. For a second violation ~~*on or after the effective date of that ordinance*~~, the OLSE may impose an administrative penalty of no more than ~~$1,000~~ $2,000 for each employee or applicant as to whom the violation occurred or continued. Thereafter, for subsequent violations ~~*on or after the effective date of that ordinance*~~, the OLSE may impose an administrative penalty of no more than ~~$2,000~~ $4,000 for each employee or applicant whose rights were, or continue to be, violated. The administrative penalties for each violation ~~*on or after the effective date of that ordinance*~~ shall be paid to the employee or applicant as to whom the violation occurred or continued. Notwithstanding the previous sentences in this subsection (a)~~(7)~~(5), if multiple employees or applicants are impacted by the same procedural violation at the same time (e.g., all applicants for a certain job opening are asked for their Conviction History on the initial application), the Employer shall be assessed the same administrative penalty for each of the employees or applicants affected by that procedural violation.

~~(8)~~(6) An employee, applicant or other person may report to the OLSE any suspected violation of this Article 49 within 60 days of the date the suspected violation occurred. The OLSE shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee, applicant or person reporting the violation; provided, however, that with the authorization of such person, the OLSE may disclose ~~his or her~~ *their* name and identifying information as necessary to enforce this Article or for other appropriate purposes.

~~(9)~~ (7) The Director of the OLSE shall establish rules governing the administrative process for determining and appealing violations of this Article 49. The Rules shall include procedures for:

(A) providing the Employer with notice that it may have violated this Article;

(B) providing the Employer with a right to respond to the notice;

(C) providing the Employer with notice of the OLSE's determination of a violation;

(D) providing the Employer with an opportunity to appeal the OLSE's determination to a hearing officer, who is appointed by the City Controller or his or her *or their* designee.

~~(10)~~(8) If there is no appeal of the OLSE's determination of a violation, that determination shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the Employer against the City regarding the OLSE's determination of a violation.

~~(11)~~(9) If there is an appeal of the OLSE's determination of a violation, the hearing before the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any such hearing, the OLSE's determination of a violation shall be considered

prima facie evidence of a violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that the OLSE's determination of a violation is incorrect. The hearing officer's decision of the appeal shall constitute the City's final decision. The sole means of review of the City's final decision, rendered by the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of mandate under Section 1094.5 of the California Code of Civil Procedure. The OLSE shall notify the Employer of this right of review after issuance of the City's final decision by the hearing officer.

(b) **Civil Enforcement**. The City or any employee or applicant whose rights under this Article 49 have been violated may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Article, and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an additional sum as liquidated damages in the amount of ~~$500~~ *$1,000* to each employee, applicant or other person whose rights under this Article were violated for each day such violation continued or was permitted to continue; appropriate injunctive relief; and, further shall be awarded reasonable attorney's fees and costs. An employee or applicant may institute a civil action under this subsection (b) only if:

(1) The employee or applicant has filed a complaint with the Director of the OLSE;

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

(3) After such 90-day period has passed, the employee or applicant provides 30-day written notice to the Director of the OLSE and the City Attorney's Office of ~~his or her~~ *their* intent to initiate civil proceedings; and

(4) The City Attorney's Office has not provided notice to the employee or applicant of the City's intent to initiate civil proceedings by the end of the 30-day period.

(c) **Interest**. In any administrative or civil action brought under this Article, the OLSE or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(d) **Remedies Cumulative**. The remedies, penalties, and procedures provided under this Article are cumulative.

(e) **Limitation on Actions**. Civil Actions to enforce the employment provisions of this Article must be filed within one year after the date of the violation. This limitations period shall not commence until the date the violation was discovered or could reasonably have been discovered.

(f) **Tracking of Complaints**. OLSE shall maintain a record of the number and types of complaints it receives alleging violations of this Article, and the resolution of those complaints. OLSE shall report this information to the Board of Supervisors ~~*within six months of the operative date of the ordinance in Board of Supervisors File No. 171106 and then*~~ annually ~~*thereafter*~~.

SEC. 4910. EMPLOYER RECORDS.

(a) An Employer shall retain records of employment, application forms, and other pertinent data and records required under this Article, for a period of three years, and shall allow the OLSE access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Article.

(b) An Employer shall provide information to the OLSE, or the OLSE's designee, on an annual basis ~~*(with the exception of reporting on calendar year 2019 and 2020 compliance)*~~ as may be required to verify the Employer's compliance with this Article.

(c) In no event shall the OLSE require an Employer to provide any information or documents the disclosure of which would violate state or federal law.

(d) Where an Employer does not maintain or retain adequate records documenting compliance with this Article or does not allow the OLSE reasonable access to such records, it shall be presumed that the Employer did not comply with this Article, absent clear and convincing evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to provide any and all nonfinancial information to OLSE necessary to fulfill OLSE's responsibilities as the enforcing agency under this Article. With regard to all such information provided by the Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality provisions of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.

(e) Pursuant to its rulemaking authority under this Article, the OLSE shall adopt rules that establish procedures for Employers to maintain and retain accurate records and to provide annual reporting of compliance to OLSE in a manner that does not require disclosure of any information that would violate State or Federal privacy laws.

SEC. 4911. IMPLEMENTATION AND ENFORCEMENT OF HOUSING PROVISIONS.

(a) **Administrative Enforcement**.

(1) With regard to the housing provisions of this Article 49, the HRC, in consultation with the Mayor's Office of Housing and Community Development, is authorized to take appropriate steps to enforce this Article and coordinate enforcement, including the investigation of any possible violations of this Article 49. The HRC ~~*shall not find a violation based on a Housing Provider's decision that an applicant's Conviction History is Directly Related, but otherwise*~~ may find a violation of this Article~~, *including if the*~~ *based on a finding that a* Housing Provider failed to conduct the individualized assessment as required under Section 4906(f) *or that a Housing Provider issued an Adverse Decision based in whole or in part on an applicant's Abortion-Related Healthcare Conviction, Drag Conviction, Gender Affirming Care Conviction, or*

Spontaneous Abortion-Related Conviction as prohibited by Section 4906(f). The HRC shall not find a violation based on a Housing Provider's determination that an applicant's Conviction, other than an Abortion-Related Healthcare Conviction, Drag Conviction, Gender Affirming Care Conviction, or Spontaneous Abortion-Related Conviction, is a Directly-Related Conviction.

~~*(2) Where the Director of HRC determines that a violation has occurred, he or she may issue a determination and order any appropriate relief; provided, however, that for a first violation, or for any violation during the first twelve months following the operative date of this Article 49 , the Director must issue warnings and notices to correct, and offer the Housing Provider technical assistance on how to comply with the requirements of this Article 49 . For a second violation, the Director may impose an administrative penalty of no more than $50.00 that the Housing Provider must pay for each applicant as to whom the violation occurred or continued. Thereafter, for subsequent violations, the penalty may increase to no more than $100, payable to the City for each applicant whose rights were, or continue to be, violated. Such funds shall be allocated to the HRC and used to offset the costs of implementing and enforcing this Article.*~~

~~*(3)*~~*(2)* If multiple applicants are impacted by the same procedural violation at the same time (e.g. all applicants for a certain housing unit are asked for their Conviction History on the initial application), the violation shall be treated as a single violation rather than multiple violations.

~~*(4) Subsections (a)(2) and (a)(3) apply to violations occurring prior to the effective date of the ordinance in Board of Supervisors File No. 171170 amending this Section 4911. Subsections (a)(5) and (a)(6) apply to violations occurring on or after the effective date of that ordinance.*~~

~~*(5)*~~*(3)* Where the Director of HRC determines that a violation has occurred, ~~*he or she*~~ *the Director* may issue a determination and order any appropriate relief. If multiple applicants are impacted by the same procedural violation at the same time (e.g., all applicants

for a certain housing unit are asked for their Conviction History on the initial application), the violation shall be treated as one violation for each impacted applicant.

~~(6)~~(4) For a first violation ~~on or after the effective date of the ordinance in Board of Supervisors File No. 171170 amending this Section 4909~~, the Director of HRC may impose an administrative penalty of no more than ~~$500~~ $1,000 for each applicant as to whom the violation occurred or continued. For a second violation ~~on or after the effective date of that ordinance~~, the Director of HRC may impose an administrative penalty of no more than ~~$1,000~~ $2,000 for each applicant as to whom the violation occurred or continued. Thereafter, for subsequent violations ~~on or after the effective date of that ordinance~~, the Director of HRC may impose an administrative penalty of no more than ~~$2,000~~ $4,000 for each applicant whose rights were, or continue to be, violated. The administrative penalties for each violation ~~on or after the effective date of that ordinance~~ shall be paid to the applicant as to whom the violation occurred or continued. Notwithstanding the previous sentences in this subsection (a)~~(6)~~(4), if multiple applicants are impacted by the same procedural violation at the same time (e.g., all applicants for a certain housing unit are asked for their Conviction History on the initial application), the Housing Provider shall be assessed the same administrative penalty for each of the applicants affected by that procedural violation.

~~(7)~~(5) An applicant or other person may report to the HRC any suspected violation of this Article 49 within 60 days of the date the suspected violation occurred. The HRC shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee, applicant or person reporting the violation; provided, however, that with the authorization of such person, the HRC may disclose ~~his or her~~ their name and identifying information as necessary to enforce this Article 49 or for other appropriate purposes.

~~(8)~~(6) The Director of the HRC, in consultation with the Mayor's Office of Housing and Community Development, shall establish rules governing the administrative process for determining and appealing violations of this Article 49. The Rules shall include procedures for:

(A) providing the Housing Provider with notice that it may have violated this Article 49;

(B) providing the Housing Provider with a right to respond to the notice;

(C) providing the Housing Provider with notice of the Director's determination of a violation;

(D) providing the Housing Provider with an opportunity to appeal the Director's determination to the HRC.

~~(9)~~(7) If there is no appeal of the Director's determination of a violation, that determination shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the Housing Provider against the City regarding the Director's determination of a violation.

~~(10)~~(8) If there is an appeal of the Director's determination of a violation, the City Controller or ~~his or her~~ *the Controller's* designee shall appoint a person, other than a member of the Commission, to serve as a hearing officer. The hearing before the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any such hearing, the Director's determination of a violation shall be considered prima facie evidence of a violation, and the Housing Provider shall have the burden of proving, by a preponderance of the evidence, that the Director's determination of a violation is incorrect.

~~(11)~~(9) If the hearing officer finds that the Housing Provider has engaged in conduct in violation of this Article 49, the hearing officer shall issue an order requiring the Housing Provider to cease and desist from the practice and to offer the housing accommodation to the applicant or applicants under the terms for which the unit was offered

to the public. The Housing Provider shall not be required to offer the housing accommodation if the unit has already been rented or leased to a tenant, but the Housing Provider shall be required to offer a comparable unit, if available, to the applicant or applicants.

~~(12)~~*(10)* The decision of the hearing officer shall be final unless the Commission vacates his or her decision on appeal.

~~(13)~~*(11)* Either party may file an appeal of the hearing officer's decision with the Commission. Such an appeal to the Commission from the determination of the hearing officer must be made within 15 days of the mailing of the decision and findings of fact. The appeal shall be in writing and must state the grounds for appellant's claim that there was either error or abuse of discretion on the part of the hearing officer. Each appeal shall be accompanied by a $15 filing fee; provided, however, the fee shall be waived for an individual who files an affidavit under penalty of perjury stating that *the individual* ~~he or she~~ is an indigent person who does not have and cannot obtain the money to pay the filing fee without using money needed for the necessities of life. The filing of an appeal will not stay the effect of the hearing officer's decision.

~~(14)~~*(12)* Upon receipt of an appeal, the entire administrative record of the matter, including the appeal, shall be filed with the Commission.

(~~15~~)*(13)* The Commission may in its discretion determine to hear an appeal. In deciding whether to hear an appeal, the Commission shall consider, among other things, fairness to the parties, hardship to either party and promotion of the policies and purposes of this Article 49. In determining whether to hear an appeal the Commission may also review material from the administrative record of the matter as it deems necessary. A vote of the majority of the Commission shall be required for an appeal to be heard.

~~(16)~~*(14)* In those cases where the Commission is able to determine on the basis of the documents before it that the hearing officer has erred, the Commission may without

determining whether to hear the appeal remand the case for further hearing in accordance with its instructions without conducting an appeal hearing. Both parties shall be notified as to the time of the re-hearing, which shall be conducted within 30 days of the remand by the Commission. In those cases where the Commission is able to determine on the basis of the documents before it that the hearing officer's findings contain numerical or clerical inaccuracies, or require clarification, the Commission may continue the hearing for purposes of referring the case back to said hearing officer in order to correct the findings.

~~(17)~~(15) Appeals accepted by the Commission shall be heard within 45 days of the filing of an appeal. Within 30 days of the filing of an appeal, both parties shall be notified in writing as to whether the appeal has been accepted. If the appeal has been accepted, the notice shall state the time of the hearing and the nature of the hearing. Such notice must be mailed at least 10 days prior to the hearing.

~~(18)~~(16) At the appeal hearing, the parties shall have an opportunity to present oral and written argument in support of their positions. The Commission may in its discretion allow the parties to present additional evidence that was not considered by the hearing officer. After such hearing and after any further investigation which the Commission may deem necessary, the Commission may, upon hearing the appeal, affirm, reverse or modify the hearing officer's decision or may remand the case for further hearing in accordance with its findings. The Commission's decision must be rendered within 45 days of the completion of the hearing and the parties must be notified of such decision.

~~(19)~~(17) In accordance with the above subsection, the Commission shall give the parties written notice of the decision. The notice shall state that the decision is final.

(b) **Civil Enforcement**. The City or any applicant whose rights under this Article 49 have been violated may bring a civil action in a court of competent jurisdiction against the Housing Provider or other person violating this Article 49, and, upon prevailing, shall be

entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an additional sum as liquidated damages in the amount of ~~$500~~ *$1,000* to each employee, applicant or other person whose rights under this Article 49 were violated for each day such violation continued or was permitted to continue; appropriate injunctive relief; and, further shall be awarded reasonable attorney's fees and costs. An applicant may institute a civil action under this subsection (b) only if:

(1) The applicant has filed a complaint with the Director of HRC;

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

(3) After such 90-day period has passed, the applicant provides 30-day written notice to the Director of HRC and the City Attorney's Office of his or her *or their* intent to initiate civil proceedings; and

(4) The City Attorney's Office has not provided notice to the applicant of the City's intent to initiate civil proceedings by the end of the 30-day period.

(c) **Interest**. In any administrative or civil action brought under this Article, the HRC or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(d) **Remedies Cumulative**. The remedies, penalties, and procedures provided under this Article are cumulative.

(e) **Limitation on Actions**. Civil Actions to enforce the employment provisions of this Article must be filed within one year after the date of the violation. This limitations period shall not commence until the date the violation was discovered or could reasonably have been discovered.

(f) **Tracking of Complaints**. HRC shall maintain a record of the number and types of complaints it receives alleging violations of this Article, and the resolution of those complaints.

HRC shall report this information to the Board of Supervisors ~~*within six months of the operative date of the ordinance in Board of Supervisors File No. 171170 and then*~~ annually ~~*thereafter*~~.

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

Section 3. Effective Date. This ordinance shall become effective on the 31st day after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
Brianna E. Voss
Deputy City Attorney

4938-6977-4000, v.3

City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 260540 **Date Passed:** July 07, 2026

Ordinance amending the Police Code to modify provisions of the Fair Chance Ordinance that regulate the use of criminal history in certain employment and housing decisions specifically by providing that employers and affordable housing providers may not use out-of-state criminal convictions or arrests for conduct that is lawful in California related to abortion-related healthcare, drag performances, gender-affirming care, and spontaneous abortion, as defined, in making certain employment or housing-related decisions; increasing administrative penalties for violations; and increasing liquidated damages available in a lawsuit.

June 18, 2026 Government Audit and Oversight Committee - RECOMMENDED

June 30, 2026 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Chan, Chen, Dorsey, Fielder, Mahmood, Mandelman, Melgar, Sauter, Sherrill, Walton and Wong

July 07, 2026 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Chen, Dorsey, Fielder, Mahmood, Mandelman, Melgar, Sauter, Sherrill, Walton and Wong

File No. 260540

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/7/2026 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Daniel Lurie
Mayor

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Date Approved