

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; authorize the**
9 **City to bring a civil action against a housing provider that violates restrictions on**
10 **criminal history inquiries; and provide that the criminal history inquiry restrictions in**
11 **these Codes prevail over any existing conflicting City law.**

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

16

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

18

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

21 **SEC. 12T.1. DEFINITIONS.**

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

24 * * * *

25

1 "Contract" shall mean an agreement for public works or improvements to be performed,
2 or for goods or services to be purchased or grants to be provided, at the expense of the City
3 or to be paid out of moneys deposited in the treasury or out of trust moneys under the control
4 or collected by the City; ~~and~~ "Contract" does not include (1) Property Contracts, (2)
5 agreements entered into pursuant to settlement of legal proceedings, (3) contracts for urgent
6 litigation expenses as determined by the City Attorney, ~~or~~ (4) contracts for a cumulative
7 amount of \$5,000 or less per vendor in each fiscal year; or (5) Excluded Contracts.

8 * * * *

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

1 ~~a contracting utility has the power of eminent domain, or~~ agreements governing the use of City
2 property which constitutes a public forum for activities that are primarily for the purpose of
3 espousing or advocating causes or ideas and that are generally recognized as protected by
4 the First Amendment to the U.S. Constitution; or (5) agreements for activities which are
5 primarily recreational in nature, unless the user engages in a for-profit activity on the City property.

6 * * * *

7 **SEC. 12T.2. APPLICABILITY OF CHAPTER TO CONTRACTORS AND**
8 **SUBCONTRACTORS.**

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

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

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

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

23 (2) Participation in or completion of a diversion or a deferral of judgment
24 program;

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

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

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

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

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

16 (b) A Contractor or Subcontractor shall not require applicants or potential applicants
17 for employment or employees to disclose on any employment application the fact or details of
18 any Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-
19 (6). Nor shall the Contractor or Subcontractor inquire on any employment application about
20 the fact or details of any Conviction History, any Unresolved Arrest, or any matter identified in
21 subsections (a)(1)-(6). A Contractor or Subcontractor may ask on an employment application for an
22 applicant, potential applicant or employee's written consent for a Background Check so long as the
23 application includes a clear and conspicuous statement that the Contractor or Subcontractor will not
24 itself conduct or obtain from a third party the Background Check until either after the first live
25

1 interview with the person or after a conditional offer of employment in accordance with subsection (c)
2 of this Section 12T.4.

3 (c) A Contractor or Subcontractor shall not require applicants or potential applicants for
4 employment, or employees, to disclose, and shall not inquire into or discuss, their Conviction
5 History or an Unresolved Arrest until either after the first live interview with the person (via
6 telephone, videoconferencing, use of other technology, or in person) or, at the discretion of
7 the Contractor or Subcontractor, after a conditional offer of employment. A Contractor or
8 Subcontractor may not itself conduct or obtain from a third party a Background Check until either after
9 the first live interview with the person or after a conditional offer of employment.

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

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

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

23 (g) If a Contractor or Subcontractor intends to base an Adverse Action on an item or
24 items in the applicant or employee's Conviction History, prior to taking any Adverse Action the
25 Contractor or Subcontractor shall provide the applicant or employee with a copy of the

1 Background Check Report, and shall notify the applicant or employee of the prospective
2 Adverse Action and the item or items forming the basis for the prospective Adverse Action.

3 (h) If, within seven days of the date that the notice described in subsection (g) is
4 provided by the Contractor or Subcontractor to the applicant or employee, the applicant or
5 employee gives the Contractor or Subcontractor notice, orally or in writing, of evidence of the
6 inaccuracy of the item or items of Conviction History or any Evidence of Rehabilitation or
7 Other Mitigating Factors, the Contractor or Subcontractor shall delay any Adverse Action for a
8 reasonable period after receipt of the information and during that time shall reconsider the
9 prospective Adverse Action in light of the information.

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

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

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

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

25 * * * *

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

3 (1) All proposed waivers must be submitted for approval to the Director of OCA.
4 All proposed waivers must set forth the reasons the Contracting Officer is requesting the
5 waiver, what steps were taken to find any entity that complies with this Chapter, and why the
6 waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering
7 into Contracts and Property Contracts with persons that do not comply with the requirements
8 of this Chapter to follow certain procedures when inquiring about and using criminal history
9 information in employment decisions.

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

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

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

19 * * * *

20 (j) The Contracting Officer may waive the restriction in subsection (a)(5) of Section 12T.4 and
21 any limitations imposed in this Chapter based on subsection (a)(5) as to any Contract or Property
22 Contract, including any grant, where the Contracting Officer certifies in writing that, in the
23 performance of the agreement, the Contractor or grantee (1) is providing services to or has supervisory
24 or disciplinary authority over a minor, (2) is providing services to or has supervisory authority over a
25 “dependent adult,” as that phrase is defined in California Welfare and Institutions Code Section

1 15610.23 or any successor state law, or (3) is providing support services or care to or has supervisory
2 authority over a person 65 years or older. The Contracting Officer shall report annually in writing to
3 the Director of OCA all waivers that he or she grants pursuant to this subsection (j).

4
5 Section 2. The Police Code is hereby amended by revising Sections 4903, 4904,
6 4906, and 4911 of Article 49, and adding Section 4920 to Article 49, to read as follows:

7 **SEC. 4903. DEFINITIONS.**

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

10 * * * *

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

17 * * * *

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

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

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

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

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

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

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

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

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

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

1 History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6). An Employer
2 may ask on an employment application for an applicant, potential applicant or employee's written
3 consent for a Background Check so long as the application includes a clear and conspicuous statement
4 that the Employer will not itself conduct or obtain from a third party the Background Check until either
5 after the first live interview with the person or after a conditional offer of employment in accordance
6 with subsection (c) of this Section 4904.

7 (c) The Employer shall not require applicants or potential applicants for employment,
8 or employees, to disclose, and shall not inquire into or discuss, their Conviction History or an
9 Unresolved Arrest until either after the first live interview with the person (via telephone,
10 videoconferencing, use of other technology, or in person) or, at the Employer's discretion,
11 after a conditional offer of employment. The Employer may not itself conduct or obtain from a third
12 party a Background Check until either after the first live interview with the person or after a
13 conditional offer of employment.

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

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

22 (f) In making an employment decision based on an applicant's or employee's
23 Conviction History, an Employer shall conduct an individualized assessment, considering only
24 Directly-Related Convictions, the time that has elapsed since the Conviction or Unresolved
25

1 Arrest, and any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating
2 Factors.

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

8 (h) If, within seven days of the date that the notice described in subsection (g) is
9 provided by the Employer to the applicant or employee, the applicant or employee gives the
10 Employer notice, orally or in writing, of evidence of the inaccuracy of the item or items of
11 Conviction History or any Evidence of Rehabilitation or Other Mitigating Factors, the Employer
12 shall delay any Adverse Action for a reasonable period after receipt of the information and
13 during that time shall reconsider the prospective Adverse Action in light of the information.

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

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

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

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

6 * * * *

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

14 * * * *

15 **SEC. 4911. IMPLEMENTATION AND ENFORCEMENT OF HOUSING PROVISIONS.**

16 (a) **Administrative Enforcement.**

17 (1) With regard to the housing provisions of this Article, the HRC, in
18 consultation with the Mayor's Office of Housing and Community Development, is authorized to
19 take appropriate steps to enforce this Article and coordinate enforcement, including the
20 investigation of any possible violations of this Article. The HRC shall not find a violation based
21 on a Housing Provider's decision that an applicant's Conviction History is Directly Related, but
22 otherwise may find a violation of this Article, including if the Housing Provider failed to conduct
23 the individualized assessment as required under Section 4906(f).

24 (2) Where the Director of HRC determines that a violation has occurred, he or
25 she may issue a determination and order any appropriate relief; provided, however, that for a

1 first violation, or for any violation during the first twelve months following the operative date of
2 this Article, the Director must issue warnings and notices to correct, and offer the Housing
3 Provider technical assistance on how to comply with the requirements of this Article. For a
4 second violation, the Director may impose an administrative penalty of no more than \$50.00
5 that the Housing Provider must pay for each applicant as to whom the violation occurred or
6 continued. Thereafter, for subsequent violations, the penalty may increase to no more than
7 \$100, payable to the City for each applicant whose rights were, or continue to be, violated.
8 Such funds shall be allocated to the HRC and used to offset the costs of implementing and
9 enforcing this Article.

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

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

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

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

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

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

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

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

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

17 (8) If the hearing officer finds that the Housing Provider has engaged in
18 conduct in violation of this Article, the hearing officer shall issue an order requiring the
19 Housing Provider to cease and desist from the practice and to offer the housing
20 accommodation to the applicant or applicants under the terms for which the unit was offered
21 to the public. The Housing Provider shall not be required to offer the housing accommodation
22 if the unit has already been rented or leased to a tenant, but the Housing Provider shall be
23 required to offer a comparable unit, if available, to the applicant or applicants.

24 (9) The decision of the hearing officer shall be final unless the Commission
25 vacates his or her decision on appeal.

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

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

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

19 (13) In those cases where the Commission is able to determine on the basis of
20 the documents before it that the hearing officer has erred, the Commission may without
21 determining whether to hear the appeal remand the case for further hearing in accordance
22 with its instructions without conducting an appeal hearing. Both parties shall be notified as to
23 the time of the re-hearing, which shall be conducted within 30 days of the remand by the
24 Commission. In those cases where the Commission is able to determine on the basis of the
25 documents before it that the hearing officer's findings contain numerical or clerical

1 inaccuracies, or require clarification, the Commission may continue the hearing for purposes
2 of referring the case back to said hearing officer in order to correct the findings.

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

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

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

18 (b) **Civil Enforcement.** The City may bring a civil action in a court of competent jurisdiction
19 against the Housing Provider or other person violating this Article, and, upon prevailing, shall be
20 entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but
21 not limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the
22 payment of an additional sum as liquidated damages in the amount of \$50.00 to each employee,
23 applicant or other person whose rights under this Article were violated for each day such violation
24 continued or was permitted to continue; appropriate injunctive relief; and, further shall be awarded
25 reasonable attorney's fees and costs.

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

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

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

9 ~~(b)~~ (f) **Tracking of Complaints.** HRC shall maintain a record of the number and types of
10 complaints it receives alleging violations of this Article, and the resolution of those complaints.
11 This information shall be compiled on an annual calendar year basis and reported to the
12 Board of Supervisors by January 31 of each year.

13 * * * *

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

15 If there is a conflict between the requirements of this Article and any City law, rule or
16 regulation existing as of the effective date of Ordinance No. _____, amending this Article, the
17 requirements of this Article shall prevail.

18
19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the "Note" that appears under
4 the official title of the ordinance.

5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: _____
8 FRANCESCA GESSNER
9 Deputy City Attorney

10 n:\legana\as2014\1500006\00953830.doc

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25