

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: *ll for* Alisa Somera, Legislative Deputy Director
Rules Committee

DATE: November 6, 2017

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Rules Committee

The Board of Supervisors' Rules Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 171170

Ordinance amending the Police Code to prohibit employers and housing providers from inquiring about, requiring disclosure of, or basing housing and employment decisions on convictions for decriminalized behavior, including the non-commercial use and cultivation of cannabis; reducing from 20 to 5 the number of employees required for an employer to be covered by the Fair Chance Ordinance (Article 49); authorize the City to impose penalties for the first violation of that Ordinance, increase the penalties for subsequent violations, and authorize the payment of penalties to the victims of those violations; create a private right of action for the victims; and amend the Administrative Code to, among other things, as defined herein, require City contractors and subcontractors to adhere to the above requirements when making decisions regarding employment of persons for work on City contracts and subcontracts.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

c: Menaka Mahajan, Small Business Commission

1 [Police, Administrative Codes - Considering Criminal History in Employment and Housing
2 Decisions]

3 **Ordinance amending the Police Code to prohibit employers and housing providers**
4 **from inquiring about, requiring disclosure of, or basing housing and employment**
5 **decisions on convictions for decriminalized behavior, including the non-commercial**
6 **use and cultivation of cannabis; reducing from 20 to 5 the number of employees**
7 **required for an employer to be covered by the Fair Chance Ordinance (Article 49);**
8 **authorize the City to impose penalties for the first violation of that Ordinance, increase**
9 **the penalties for subsequent violations, and authorize the payment of penalties to the**
10 **victims of those violations; create a private right of action for the victims; and amend**
11 **the Administrative Code to, among other things, as defined herein, require City**
12 **contractors and subcontractors to adhere to the above requirements when making**
13 **decisions regarding employment of persons for work on City contracts and**
14 **subcontracts.**

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

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

24 Section 1. The Police Code is hereby amended by revising Sections 4903, 4904,
25 4906, 4909, and 4911 of Article 49, to read as follows:

1 **SEC. 4903. DEFINITIONS.**

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

4 * * * *

5
6 "Employer" shall mean any individual, firm, corporation, partnership, labor organization,
7 group of persons, association, or other organization however organized, that is located or
8 doing business in the City, and that employs 20five or more persons regardless of location,
9 including the owner or owners and management and supervisory employees. "Employer"
10 includes job placement and referral agencies and other employment agencies. "Employer"
11 does not include the City and County of San Francisco, any other local governmental unit, or
12 any unit of the state government or the federal government.

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

19 * * * *

20
21 **SEC. 4904. PROCEDURES FOR USE OF CRIMINAL HISTORY INFORMATION IN**
22 **EMPLOYMENT DECISIONS.**

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

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

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

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

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

11 (5) A Conviction that is more than seven years old, the date of Conviction being
12 the date of sentencing, except that this restriction and any limitations imposed in this Article 49
13 based on the limitation in this subsection (a)(5) shall not apply where the applicant or
14 employee is or will be (A) providing services to or have supervisory or disciplinary authority
15 over a minor, (B) providing services to or have supervisory or disciplinary authority over a
16 "dependent adult," as that phrase is defined in California Welfare and Institutions Code
17 Section 15610.23 or any successor state law, or (C) providing support services or care to or
18 has supervisory authority over a person 65 years or older; ~~or~~

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

24 (7) A Conviction that arises out of conduct that has been decriminalized since the date
25 of the Conviction, the date of the Conviction being the date of sentencing. Examples of statutes that

1 have decriminalized particular conduct include but are not limited to California Health and Safety
2 Code Sections 11362.1 and 11362.2.

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

5 (b) The Employer shall not require applicants or potential applicants for employment
6 or employees to disclose on any employment application the fact or details of any Conviction
7 History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6). Nor shall
8 the Employer inquire on any employment application about the fact or details of any
9 Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6).
10 An Employer may ask on an employment application for an applicant, potential applicant, or
11 employee's written consent for a Background Check so long as the application includes a
12 clear and conspicuous statement that the Employer will not itself conduct or obtain from a
13 third party the Background Check until either after the first live interview with the person or
14 after a conditional offer of employment in accordance with subsection (c) of this Section 4904.

15 * * * *

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

19 (a) Regarding applicants or potential applicants for Affordable Housing, and their
20 household members, a Housing Provider shall not, at any time or by any means, inquire
21 about, require disclosure of, or if such information is received base an Adverse Action in
22 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 sSections 1203.4, 1203.4a, or 1203.41;

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

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

11 (6) Information pertaining to an offense other than a felony or misdemeanor,
12 such as an infraction; *or*

13 (7) A Conviction that arises out of conduct that has been decriminalized since the date
14 of the Conviction, the date of the Conviction being the date of sentencing. Examples of statutes that
15 have decriminalized particular conduct include but are not limited to California Health and Safety
16 Code Sections 11362.1 and 11362.2.

17 Accordingly, the matters identified in this subsection (a) may not be considered in any
18 manner by the Housing Provider.

19 (b) The Housing Provider shall not require applicants for Affordable Housing to
20 disclose on any housing application the fact or details of any Conviction History, any
21 Unresolved Arrest, or any matter identified in subsections (a)(1)-(6). Nor shall the Housing
22 Provider inquire on any housing application about the fact or details of any Conviction History,
23 any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6)).

24 * * * *

1 **SEC. 4909. IMPLEMENTATION AND ENFORCEMENT OF EMPLOYMENT**
2 **PROVISIONS.**

3 (a) Administrative Enforcement.

4 (1) With regard to the employment provisions of this Article 49, the OLSE is
5 authorized to take appropriate steps to enforce this Article and coordinate enforcement,
6 including the investigation of any possible violations of this Article. Where the OLSE has
7 reason to believe that a violation has occurred, it may order any appropriate temporary or
8 interim relief to mitigate the violation or maintain the status quo pending completion of a full
9 investigation or hearing. The OLSE shall not find a violation based on an Employer's decision
10 that an applicant or employee's Conviction History is Directly Related, but otherwise may find
11 a violation of this Article, including if the Employer failed to conduct the individualized
12 assessment as required under Section 4904(f).

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

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

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

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

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

16 _____ (7) For a first violation on or after the effective date of the ordinance in Board of
17 Supervisors File No. _____ amending this Section 4909, the OLSE may impose an administrative
18 penalty of no more than \$500 for each employee or applicant as to whom the violation occurred or
19 continued. For a second violation on or after the effective date of that ordinance, the OLSE may
20 impose an administrative penalty of no more than \$1,000 for each employee or applicant as to whom
21 the violation occurred or continued. Thereafter, for subsequent violations on or after the effective date
22 of that ordinance, the OLSE may impose an administrative penalty of no more than \$2,000 for each
23 employee or applicant whose rights were, or continue to be, violated. The administrative penalties for
24 each violation on or after the effective date of that ordinance shall be paid to the employee or applicant
25 as to whom the violation occurred or continued. Notwithstanding the previous sentences in this

1 subsection (a)(7), if multiple employees or applicants are impacted by the same procedural violation at
2 the same time (e.g., all applicants for a certain job opening are asked for their Conviction History on
3 the initial application), the Employer shall be assessed the same administrative penalty for each of the
4 employees or applicants affected by that procedural violation.

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

13 (69) The Director of the OLSE shall establish rules governing the administrative
14 process for determining and appealing violations of this Article 49. The Rules shall include
15 procedures for:

- 16 (A) providing the Employer with notice that it may have violated this
17 Article;
- 18 (B) providing the Employer with a right to respond to the notice;
- 19 (C) providing the Employer with notice of the OLSE's determination of a
20 violation;
- 21 (D) providing the Employer with an opportunity to appeal the OLSE's
22 determination to a hearing officer, who is appointed by the City Controller or his or her
23 designee.

24 (710) If there is no appeal of the OLSE's determination of a violation, that
25 determination shall constitute a failure to exhaust administrative remedies, which shall serve

1 as a complete defense to any petition or claim brought by the Employer against the City
2 regarding the OLSE's determination of a violation.

3 (§11) If there is an appeal of the OLSE's determination of a violation, the
4 hearing before the hearing officer shall be conducted in a manner that satisfies the
5 requirements of due process. In any such hearing, the OLSE's determination of a violation
6 shall be considered prima facie evidence of a violation, and the Employer shall have the
7 burden of proving, by a preponderance of the evidence, that the OLSE's determination of a
8 violation is incorrect. The hearing officer's decision of the appeal shall constitute the City's
9 final decision. The sole means of review of the City's final decision, rendered by the hearing
10 officer, shall be by filing in the San Francisco Superior Court a petition for writ of mandate
11 under Section 1094.5 of the California Code of Civil Procedure. The OLSE shall notify the
12 Employer of this right of review after issuance of the City's final decision by the hearing officer.

13 (b) Civil Enforcement. The City or any employee or applicant whose rights under this
14 Article 49 have been violated may bring a civil action in a court of competent jurisdiction against
15 the Employer or other person violating this Article, and, upon prevailing, shall be entitled to
16 such legal or equitable relief as may be appropriate to remedy the violation including, but not
17 limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the
18 payment of an additional sum as liquidated damages in the amount of \$500~~.00~~ to each
19 employee, applicant or other person whose rights under this Article were violated for each day
20 such violation continued or was permitted to continue; appropriate injunctive relief; and,
21 further shall be awarded reasonable attorney's fees and costs. An employee or applicant may
22 institute a civil action under this subsection (b) only if:

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

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

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

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

6 * * * *

7
8 **SEC. 4911. IMPLEMENTATION AND ENFORCEMENT OF HOUSING PROVISIONS.**

9 (a) Administrative Enforcement.

10 (1) With regard to the housing provisions of this Article 49, the HRC, in
11 consultation with the Mayor's Office of Housing and Community Development, is authorized to
12 take appropriate steps to enforce this Article and coordinate enforcement, including the
13 investigation of any possible violations of this Article 49. The HRC shall not find a violation
14 based on a Housing Provider's decision that an applicant's Conviction History is Directly
15 Related, but otherwise may find a violation of this Article, including if the Housing Provider
16 failed to conduct the individualized assessment as required under Section 4906(f).

17 (2) Where the Director of HRC determines that a violation has occurred, he or
18 she may issue a determination and order any appropriate relief; provided, however, that for a
19 first violation, or for any violation during the first twelve months following the operative date of
20 this Article 49, the Director must issue warnings and notices to correct, and offer the Housing
21 Provider technical assistance on how to comply with the requirements of this Article 49. For a
22 second violation, the Director may impose an administrative penalty of no more than \$50.00
23 that the Housing Provider must pay for each applicant as to whom the violation occurred or
24 continued. Thereafter, for subsequent violations, the penalty may increase to no more than
25 \$100, payable to the City for each applicant whose rights were, or continue to be, violated.

1 Such funds shall be allocated to the HRC and used to offset the costs of implementing and
2 enforcing this Article.

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

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

10 (5) Where the Director of HRC determines that a violation has occurred, he or she may
11 issue a determination and order any appropriate relief. If multiple applicants are impacted by the
12 same procedural violation at the same time (e.g., all applicants for a certain housing unit are asked for
13 their Conviction History on the initial application), the violation shall be treated as one violation for
14 each impacted applicant.

15 (6) For a first violation on or after the effective date of the ordinance in Board of
16 Supervisors File No. _____ amending this Section 4909, the Director of HRC may impose an
17 administrative penalty of no more than \$500 for each applicant as to whom the violation occurred or
18 continued. For a second violation on or after the effective date of that ordinance, the Director of HRC
19 may impose an administrative penalty of no more than \$1,000 for each applicant as to whom the
20 violation occurred or continued. Thereafter, for subsequent violations on or after the effective date of
21 that ordinance, the Director of HRC may impose an administrative penalty of no more than \$2,000 for
22 each applicant whose rights were, or continue to be, violated. The administrative penalties for each
23 violation on or after the effective date of that ordinance shall be paid to the applicant as to whom the
24 violation occurred or continued. Notwithstanding the previous sentences in this subsection (a)(6), if
25 multiple applicants are impacted by the same procedural violation at the same time (e.g., all applicants

1 for a certain housing unit are asked for their Conviction History on the initial application), the Housing
2 Provider shall be assessed the same administrative penalty for each of the applicants affected by that
3 procedural violation.

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

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

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

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

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

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

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

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(~~7~~10) If there is an appeal of the Director's determination of a violation, the City Controller or his or her 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.

(~~8~~11) If the hearing officer finds that the Housing Provider has engaged in conduct in violation of this Article ~~4~~9, 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.

(~~9~~12) The decision of the hearing officer shall be final unless the Commission vacates his or her decision on appeal.

(~~10~~13) 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 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

1 necessities of life. The filing of an appeal will not stay the effect of the hearing officer's
2 decision.

3 (~~11~~14) Upon receipt of an appeal, the entire administrative record of the matter,
4 including the appeal, shall be filed with the Commission.

5 (~~12~~15) The Commission may in its discretion determine to hear an appeal. In
6 deciding whether to hear an appeal, the Commission shall consider, among other things,
7 fairness to the parties, hardship to either party and promotion of the policies and purposes of
8 this Article 49. In determining whether to hear an appeal the Commission may also review
9 material from the administrative record of the matter as it deems necessary. A vote of the
10 majority of the Commission shall be required for an appeal to be heard.

11 (~~13~~16) In those cases where the Commission is able to determine on the basis
12 of the documents before it that the hearing officer has erred, the Commission may without
13 determining whether to hear the appeal remand the case for further hearing in accordance
14 with its instructions without conducting an appeal hearing. Both parties shall be notified as to
15 the time of the re-hearing, which shall be conducted within 30 days of the remand by the
16 Commission. In those cases where the Commission is able to determine on the basis of the
17 documents before it that the hearing officer's findings contain numerical or clerical
18 inaccuracies, or require clarification, the Commission may continue the hearing for purposes
19 of referring the case back to said hearing officer in order to correct the findings.

20 (~~14~~17) Appeals accepted by the Commission shall be heard within 45 days of
21 the filing of an appeal. Within 30 days of the filing of an appeal, both parties shall be notified in
22 writing as to whether the appeal has been accepted. If the appeal has been accepted, the
23 notice shall state the time of the hearing and the nature of the hearing. Such notice must be
24 mailed at least 10 days prior to the hearing.

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

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

6 * * * *

7
8 Section 2. The Administrative Code is hereby amended by revising Sections 12T.1,
9 12T.4, 12T.6, and 12T.8 of Chapter 12T, to read as follows:

10
11 **SEC. 12T.1. DEFINITIONS.**

12 For the purposes of this Chapter 12T, the following words and phrases shall mean and
13 include:

14 * * * *

15 "Contract" shall mean an agreement for public works or improvements to be performed,
16 or for goods or services to be purchased or grants to be provided, at the expense of the City
17 or to be paid out of moneys deposited in the treasury or out of trust moneys under the control
18 or collected by the City. "Contract" does not include (1) Property Contracts, (2) agreements
19 entered into pursuant to settlement of legal proceedings, (3) contracts for urgent litigation
20 expenses as determined by the City Attorney, or (4) contracts for a cumulative amount of
21 \$5,000 or less per vendor in each fiscal year, ~~or (5) Excluded Contracts.~~

22 * * * *

23 "Property Contract" shall mean a written agreement, including a lease, permit, or
24 ~~license or easement~~, through which the City gives to a person or entity the right to exclusively
25 use or occupy real property owned or controlled by the City for a period of more than 29 days

1 in any calendar year, but excluding the following (collectively, "Excluded Property Contracts"):
2 (1) an agreement through which the City gives the right to use or occupy real property owned or
3 controlled by the City to ~~with~~ a public entity or public utility; (2) a revocable at-will permit
4 regardless of the ultimate duration of such permit, unless the permittee engages in a for-profit
5 activity on the City property; (3) regulatory permits, including street or public right of way
6 construction, excavation, and use permits; (4) agreements governing the use of City property
7 which constitutes a public forum for activities that are primarily for the purpose of espousing or
8 advocating causes or ideas and that are generally recognized as protected by the First
9 Amendment to the U.S. Constitution; or (5) agreements for activities which are primarily
10 recreational in nature, unless the user engages in a for-profit activity on the City property.

11 * * * *

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

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

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

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

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

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

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

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

11 (7) A Conviction that arises out of conduct that has been decriminalized since the date
12 of the Conviction, the date of the Conviction being the date of sentencing. Examples of statutes that
13 have decriminalized particular conduct include but are not limited to California Health and Safety
14 Code Sections 11362.1 and 11362.2.

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

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

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

3 * * * *

4
5 **SEC. 12T.6. IMPLEMENTATION AND ENFORCEMENT.**

6 (a) The OLSE is authorized to take appropriate steps to enforce and coordinate
7 enforcement of this Chapter 12T, including the investigation of possible violations of this
8 Chapter. The OLSE shall not find a violation based on a Contractor or Subcontractor's
9 decision that an applicant or employee's Conviction History is Directly-Related, but otherwise
10 may find a violation of this ~~Article~~Chapter, including if the Contractor or Subcontractor failed to
11 conduct the individualized assessment as required under Section 12T.4(f). ~~If multiple~~
12 ~~employees or applicants are impacted by the same procedural violation at the same time (e.g. all~~
13 ~~applicants for a certain job opening are asked for their conviction history on the initial application),~~
14 ~~the violation shall be treated as a single violation rather than multiple violations.~~

15 (b) An employee, applicant or other person may report to the OLSE any suspected
16 violation of this Chapter 12T. The OLSE shall encourage reporting pursuant to this subsection
17 (b) by keeping confidential, to the maximum extent permitted by applicable laws, the name
18 and other identifying information ~~off~~he of the employee or person reporting the violation;
19 provided, however, that with the authorization of such person, the OLSE may disclose his or
20 her name and identifying information as necessary to enforce this Chapter or for other
21 appropriate purposes.

22 (c) A Contractor or Subcontractor shall be deemed to have breached the provisions
23 regarding the procedures for use of Conviction History in employment upon a finding by the
24 OLSE that the Contractor or Subcontractor has willfully violated these provisions, ~~provided,~~
25 ~~however, that for a first violation, or for any violation during the first twelve months following the~~

1 ~~operative date of this Chapter, the OLSE must issue warnings and notices to correct, and offer the~~
2 ~~Contractor or Subcontractor technical assistance on how to comply with the requirements of this~~
3 ~~Chapter except as provided in the second sentence of subsection (f) of this Section 12T.6.~~

4 ~~(d) Upon a subsequent finding of a violation of this Chapter, the awarding authority shall~~
5 ~~notify the Contractor or Subcontractor that unless the Contractor or Subcontractor demonstrates to the~~
6 ~~satisfaction of the OLSE within such reasonable period as the OLSE shall determine, that the violation~~
7 ~~has been corrected, action will be taken as set forth in subparagraphs (g) through (j) hereof.~~

8 (ed) The Director of the OLSE shall establish rules governing the administrative
9 process for determining and appealing violations of this Chapter 12T. The ~~R~~rules shall include
10 procedures for:

11 (1) providing the Contractor or Subcontractor with notice that it may have
12 violated this Chapter;

13 (2) providing the Contractor or Subcontractor with a right to respond to the
14 notice;

15 (3) providing the Contractor or Subcontractor with notice of the OLSE's
16 determination of a violation;

17 (4) providing the Contractor with an opportunity to appeal the OLSE's
18 determination to a hearing officer, who is appointed by the City Controller or his or her
19 designee.

20 (fe) If there is an appeal of the OLSE's determination of a violation, the hearing before
21 the hearing officer shall be conducted in a manner that satisfies the requirements of due
22 process. In any such hearing, the OLSE's determination of a violation shall be considered
23 prima facie evidence of a violation, and the Contractor or Subcontractor shall have the burden
24 of proving, by a preponderance of the evidence, that the OLSE's determination of a violation
25

1 is incorrect. The hearing officer's decision of the appeal shall constitute the City's final
2 decision.

3 (gf) This subsection (f) applies to violations occurring during the term of a Contract entered
4 into prior to the effective date of the ordinance in Board of Supervisors File No. _____ amending this
5 Chapter 12T. For a first violation, or for any violation during the first twelve months following the
6 operative date of this Chapter, the OLSE must issue warnings and notices to correct, and offer the
7 Contractor or Subcontractor technical assistance on how to comply with the requirements of this
8 Chapter. Upon a subsequent finding of a violation of this Chapter, the awarding authority shall notify
9 the Contractor or Subcontractor that unless the Contractor or Subcontractor demonstrates to the
10 satisfaction of the OLSE within such reasonable period as the OLSE shall determine, that the violation
11 has been corrected, action will be taken as set forth in this subsection (f) and subsections (h) through
12 (j) of this Section 12T.6. For a second violation, the awarding authority may deduct from the
13 amount payable to the Contractor or Subcontractor by the City under any Contract subject to
14 this Chapter, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of \$50
15 for each employee, applicant or other person as to whom the violation occurred or continued.
16 Thereafter, for subsequent violations, the penalty may increase to no more than \$100, for
17 each employee or applicant whose rights were, or continue to be, violated. Such funds shall
18 be allocated to the OLSE and used to offset the costs of implementing and enforcing this
19 Chapter. If multiple employees or applicants are impacted by the same procedural violation at the
20 same time (e.g. all applicants for a certain job opening are asked for their conviction history on the
21 initial application), the violation shall be treated as a single violation rather than multiple violations.

22 (g) This subsection (g) applies to violations occurring during the term of a Contract entered
23 into on or after the effective date of the ordinance in Board of Supervisors File No. _____ amending
24 this Chapter 12T. For a first violation, the awarding authority may deduct from the amount payable to
25 the Contractor or Subcontractor by the City under any Contract subject to this Chapter, or the OLSE

1 may impose upon the Contractor or Subcontractor, a penalty of \$500 for each employee, applicant or
2 other person as to whom the violation occurred or continued. For a second violation, the awarding
3 authority may deduct from the amount payable to the Contractor or Subcontractor by the City under
4 any Contract subject to this Chapter, or the OLSE may impose upon the Contractor or Subcontractor, a
5 penalty of no more than \$1,000 for each employee, applicant or other person as to whom the violation
6 occurred or continued. Thereafter, for subsequent violations, the awarding authority may deduct from
7 the amount payable to the Contractor or Subcontractor by the City under any Contract subject to this
8 Chapter, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of no more than
9 \$2,000, for each employee or applicant whose rights were, or continue to be, violated. The
10 administrative penalties for each violation shall be paid to the employee or applicant as to whom the
11 violation occurred or continued. If multiple employees or applicants are impacted by the same
12 procedural violation at the same time (e.g. all applicants for a certain job opening are asked for their
13 Conviction History on the initial application), the violation shall be treated as one violation for each
14 impacted employee or applicant.

15 * * * *

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

17 * * * *

18 (k) Waivers granted to a Contractor pursuant to this Section 12T.8 shall relieve that
19 Contractor of any obligations it may have under Article 49 of the Police Code, but only with respect to
20 work performed under the Contract or Property Contract for which the waiver was granted.

21 * * * *

22
23 Section 3. Effective and Operative Dates.

24 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
25 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance

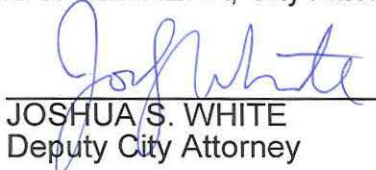
1 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
2 Supervisors overrides the Mayor's veto of the ordinance.

3 (b) Operative Date. This ordinance shall become operative on July 1, 2018.
4

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

12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By:


15 JOSHUA S. WHITE
16 Deputy City Attorney

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LEGISLATIVE DIGEST

[Police, Administrative Codes - Considering Criminal History in Employment and Housing Decisions]

Ordinance amending the Police Code to prohibit employers and housing providers from inquiring about, requiring disclosure of, or basing housing and employment decisions on convictions for decriminalized behavior, including the non-commercial use and cultivation of cannabis; reducing from 20 to 5 the number of employees required for an employer to be covered by the Fair Chance Ordinance (Article 49); authorize the City to impose penalties for the first violation of that Ordinance, increase the penalties for subsequent violations, and authorize the payment of penalties to the victims of those violations; create a private right of action for the victims; and amend the Administrative Code to, among other things, as defined herein, require City contractors and subcontractors to adhere to the above requirements when making decisions regarding employment of persons for work on City contracts and subcontracts.

Existing Law and Amendments to Existing Law

Existing Law	Amendments to Existing Law
Employers, housing providers, contractors, and subcontractors may inquire about, require disclosure of, and base housing and employment decisions on convictions for decriminalized behavior that are seven years old or less. Examples of such decriminalized behavior include the non-commercial use and cultivation of cannabis.	This measure would prohibit employers, housing providers, contractors, and subcontractors from inquiring about, requiring disclosure of, or basing housing and employment decisions on convictions for decriminalized behavior, including convictions for the non-commercial use and cultivation of cannabis.
The law applies to employers that employ 20 or more persons.	This measure would apply to employers that employ 5 or more persons.
For a first violation, no penalties may be assessed.	For a first violation, a penalty of no more than \$500 could be assessed.
For a second violation, a penalty of no more than \$50 may be assessed.	For a second violation, a penalty of no more than \$1,000 could be assessed.
For subsequent violations, a penalty of no more than \$100 may be assessed.	For subsequent violations, a penalty of no more than \$2,000 could be assessed.
If multiple people 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 is treated as a	If multiple people are impacted by the same procedural violation at the same time, the violation would be treated as one violation for each impacted person.

single violation rather than multiple violations.	
Penalties must be paid to the City.	Penalties would be paid to the person impacted by the violation.
Only the City Attorney can sue for violations of this law.	This measure would authorize any employee or applicant whose rights have been violated to sue.

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