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Honorable Members of the City Council  
c/o Holly L. Wolcott, City Clerk  
200 N. Spring Street, Room 395  
Los Angeles, CA 90012

June 9, 2016

Honorable Members:

**BUREAU OF CONTRACT ADMINISTRATION – LOS ANGELES FAIR CHANCE  
INITIATIVE FOR HIRING (BAN THE BOX) ORDINANCE RECOMMENDATIONS  
(COUNCIL FILE 14-0746)**

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The Bureau of Contract Administration (BCA) submits for your consideration recommendations for an enforcement strategy including monitoring, compliance, and penalty structure for the Los Angeles Fair Chance Initiative for Hiring (Ban the Box) ordinance.

**BACKGROUND**

On November 24, 2015, the City Council (Council) considered and adopted an Economic Development Committee Report relative to the establishment of a City of Los Angeles Fair Chance Initiative, or a Ban the Box Policy (Council File 14-0746). The primary purpose of this ordinance is to promote public health, safety and welfare in Los Angeles by eliminating some barriers to employment of persons who have been convicted of crimes. Some studies show that implementation of Ban the Box policies has helped to reduce recidivism, facilitate the reintegration into society of persons with conviction records, and decrease unemployment in parts of the community in which persons who have been convicted of crimes predominately reside.

At the special meeting held on November 17, 2015, the Economic Development Committee's Report requested that the City Attorney prepare and present an ordinance to require City contractors and private employers with 10 or more employees to remove questions relating to criminal history from job applications and to require any questions related to criminal history be made after a conditional offer of employment has been made. The report also instructed BCA, with the assistance of the City Attorney, to report on an enforcement strategy including monitoring, compliance, and penalty structure.

The BCA, as the Designated Administrative Agency (DAA) responsible for multiple Equal Employment Opportunity and wage ordinances, including the City's non-discrimination



provisions and the Living Wage and Minimum Wage Ordinances, developed these recommendations after consulting or examining the following:

- The District of Columbia’s Office of Human Rights (OHR), the City of San Francisco’s Office of Labor Standards Enforcement (OLSE), the City of Seattle’s Office of Labor Standards (OLS), the City of Philadelphia’s Commission on Human Relations (CHR), and the New York City’s Commission on Human Rights (NYCCHR).
- A Fair Chance (Ban the Box) Ordinance expert from the National Employment Law Project (NELP) and with representatives of Community-Based Organizations (CBOs) regarding best practices and lessons learned from laws already in existence.
- The National Employment Law Project (NELP) June 2015 report “Fair Chance Implementation Case Studies for Government Agencies” and the November 2015 “Testimony of Michelle Natividad Rodriguez National Employment Law Project – In Support of a City-Wide Policy for Ban the Box – Fair Chance Initiative for Hiring – Before the Economic Development Committee,” the January 2016 Fair Chance Ordinance (FCO) First Year Report by the San Francisco Human Rights Commission (HRC), and the March 2015 NELP Fair Chance – Ban the Box Toolkit.
- City of Los Angeles Office of the City Attorney.

## **ENFORCEMENT STRATEGY OVERVIEW**

The BCA makes its recommendations based on four key components for success:

- Inform the Community
- Intake Concerns
- Investigate Complaints
- Implement Corrective Actions

These recommendations present a fair enforcement and educational approach that maximizes information flow, minimizes resolution time, and monitors effectiveness to ensure a proper response to the concerns raised in the development of this ordinance.

## **INFORM THE COMMUNITY**

The Ban the Box ordinance will impose new hiring procedural requirements and potential monetary penalties on employers, therefore, effective compliance will depend on a thorough information campaign at the earliest possible stage. It is critical to inform employers of their obligations and applicants/employees of their rights in order to establish an environment that facilitates success. All of the cities reviewed, the NELP Ban the Box expert and the representatives of the CBOs highly recommend outreach and education.



### Observations

Several cities worked jointly with representatives of CBOs to assist in educating the public and employers, provide training classes by request, use social media to provide a centralized location for training materials in multiple languages, and require employer training as a mandatory provision of closing out investigations.

The District of Columbia's OHR had the greatest number of complaints submitted for their Ban the Box law. They attributed this to an effective education and outreach program and their penalty structure. The OHR has staff members who work exclusively on outreach for all of their various discrimination laws. In order to educate employers and the public about their Ban the Box law, they reached out to community advocates, built relationships with law schools and groups, and provided training sessions in prisons and penitentiaries to educate those individuals who would benefit the most from the law.

### BCA Recommendation

- Utilize the City's contractual services to expand information and outreach to employers and employees. The BCA's Office of Wage Standards (OWS) has an RFQ for a Pre-Qualified On-Call Community and Business Outreach Consultants List which utilizes contractors to assist with education and outreach.

### INTAKE CONCERNS

A review of Ban the Box policies already in effect reveal complainants have a difficult time coming forward with their concerns. Some reasons for this difficulty stem from not knowing the law, ambiguity surrounding the procedures to file complaints, the fear of retaliation, and lack of incentive to file complaints.

### Observations

Websites that store complaint forms in multiple languages, provide access to the governing ordinance and its requirements, and provide clarity of the law, will make the complaint process more accessible to more people.

The District of Columbia addresses the influx of new complaints through a "fast track" system. When the District of Columbia receives complaints, they are "fast tracked" by separating "Application" and "Investigation" complaints. An "Application" complaint is a clear violation that is located on an application form or website. These types of complaints are "fast tracked" and processed more quickly as they require less time. An "Investigation" complaint would require additional investigation time and submission of documentation. By implementing the "fast track" system, it will be less likely that the quicker investigations would be held up within a backlog of complaints, allowing for more complaints to be addressed in a timely manner.

Seattle also adopted a longer period for complaints to be submitted by recently amending their ordinance from 180 days to 3 years from the date of violation. A longer period of time from the



violation date gives those who were not previously educated on the law the time and opportunity to file a complaint.

It may be difficult to educate all of the public prior to the initiation of the new law. If this is the case, the affected “Returning Citizens” population may not know their rights under the Ban the Box ordinance and may neglect to submit complaints. Some cities proactively monitor job posting websites for violations. By searching job solicitations for language that would be inconsistent with the requirements of the Ban the Box ordinance (i.e. “No felonies”), even in the absence of a high volume of complaints, the DAA may be able to correct non-compliant practices and educate employers who did not have prior knowledge of the law.

In San Francisco’s FCO First Year Report, the Human Rights Commission (HRC) explored the future option of increasing the number of “Director-initiated charges/complaints” to “provide an additional level of anonymity and create a positive ripple effect [in the hopes of increasing the] reporting of violations, [and] thereby improving housing and employment opportunities for people with arrest and/or conviction records in San Francisco.” Implementing DAA-initiated complaints or random audits could not only produce results when few complaints are received, but also decrease the fear of retaliation or lack of incentive that some potential complainants may feel which, in turn, would increase the effectiveness of the law.

#### BCA Recommendations

- Utilize a transparent, accessible communication submission system that allows employees or employers to submit complaints or concerns in a variety of languages and methods.
- Allow a period of 365 days from the date of violation to file complaints.
- Implement a “fast track” system for complaints received.
- Proactively monitor job posting websites for violations and permitting DAA-initiated complaints or random audits.

#### INVESTIGATE COMPLAINTS

Some cities, the NELP expert, and the CBOs, recommend implementing a comprehensible law that includes the information necessary to provide guidance to employers, applicants, and enables the DAA to enforce it. Some cities have already implemented amendments on their ordinances to make their laws more effective.

#### Observations

All of the Ban the Box laws that were reviewed had exemptions included in their policies, including positions that a criminal background check was required for the hiring process such as positions in law enforcement; positions designated for programs that are used to encourage employment of those with criminal histories; or positions for programs that provide services or direct care to minors or vulnerable adults.



Philadelphia's original law did not include a requirement to post a notification about their law. However, Philadelphia recently amended their law with this language to increase public knowledge of their law. It was noted by the cities that have this requirement that this notice should be concise and clear to increase the understanding of both the notice and the law.

Language was included in all the programs reviewed that references Equal Employment Opportunity Commission (EEOC) guidelines for conducting individual assessments. All of the cities reviewed require an employer to perform an individual assessment after reviewing a criminal background history and the employer is considering a tangible adverse action against an applicant/employee. An adverse action would be, for example, if a conditional offer of an employment was withdrawn as a result of the employer's review of a criminal background history. By conducting the individual assessment, the employer is required to consider whether there is a direct relationship between the nature and gravity of the offense and the responsibilities of the job. Some of the variables that the cities considered include, but are not limited to: the nature of the offense, the time that has passed since the offense, and evidence of rehabilitation.

Most of the programs reviewed included a "Fair Chance" process if an adverse action was taken. This process may include: the requirement that the notification of an adverse action should be in writing; the employer should provide the applicant with a copy of the individual assessment; and the requirement of a job holding period ranging from 2-10 days after the employer notifies the applicant of the adverse action. This holding period is used by the applicant/employee to protest the decision and allow them time to provide the employer with evidence of rehabilitation or documentation that resolves concerns of inaccuracies provided in the background history.

The District of Columbia mandates in their law a mediation provision between a complainant and the employer, and many of their cases are settled in mediation. Some of the other cities offer a voluntary/optional mediation process.

#### BCA Recommendations

- Specify a list of exemptions, including positions that involve minors and vulnerable adults.
- Include a requirement to post a notification in the workplace or on an employer website posting for jobs.
- Require that employers assess the relationship between job duties and implications of a past conviction prior to start of the employment process, and if considering an adverse action, employers conduct individual assessments in line with EEOC guidelines.
- Require that the employer provide the applicant/employee with a "Fair Chance" process if an adverse action is taken. This could include: notification of adverse action in writing; require employer to provide applicant/employee with a copy of the individual assessment; and the employer holds the job open for five (5) days to allow the applicant to provide documentation of errors that may have been made in the criminal history or examples of rehabilitation.



- Include a requirement that employers should preserve documentation for three (3) years. This may decrease the risk of documentation that is lost or cannot be located by employers. It is in the employer's best interests to retain their records.
- Include language for the DAA to have the capability to create rules and regulations that would further define and clarify the specifics of the law and the procedures to implement.
- Allow for the possibility of mediation between a complainant and employer.

## IMPLEMENT CORRECTIVE ACTIONS

Corrective action represents steps to resolve a complaint and can take a variety of forms.

### Observations

The District of Columbia attributes the success of its program to not only an effective education and outreach effort, but also to a penalty structure that incentivizes applicants and employees to make complaints and encourages employers to comply with the requirements of the law. As an acknowledgement to the success of the District of Columbia program, Seattle recently amended their law to include a stronger penalty and fine structure modeled after the District of Columbia's program. In addition, the District of Columbia does not have a private right of action included in their law because they felt that the penalty structure and the law as it is written has been strong enough to assist those in need.

### BCA Recommendations

- Provide the DAA subpoena power which will allow them to obtain documentation from employers that complainants may not be able to access.
- Recommend a penalty structure that not only will encourage compliance with the law but also incentivize those who have been negatively affected to come forward and voice their concerns.
- Preserve a private right of action for the complainant to give them an additional enforcement option.
- Implement the following Penalty schedule, with up to \$500 awarded to the complainant regardless of whether it is a first, second, or subsequent violation:

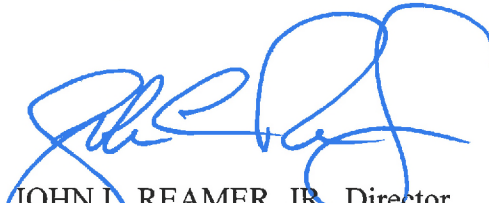


Penalty Schedule	
Violation	Penalty
First Violation	Up to \$500 per aggrieved party – subject to be waived with full compliance
Second Violation	Up to \$1,000 per aggrieved party
Subsequent Violations	Up to \$2,000 per aggrieved party

- Implement the following Fine schedule, with all fines payable to the City:

Fine Schedule	
Violation	Fine
Failure to post Ban the Box notification at work site or on job posting website	Up to \$500
Failure to retain documentation for three years	Up to \$500
Failure to cooperate with DAA's investigation	Up to \$500

Sincerely,



JOHN L. REAMER, JR., Director  
Bureau of Contract Administration

JLR:KF:bes  
20160609 Fair Chance Report

Enc.





**BAN THE BOX POLICIES MATRIX - BCA RECOMMENDATIONS AND A COMPARISON OF OTHER PROGRAMS**

Are these recommendations already in place in other city programs or if not currently in place, would they consider for future? (Yes / Not at this time)

If the city does not agree with the recommendation, what is their reasoning? (No) See below for more detailed KEY.

BCA's Recommendation for Ordinance	District of Columbia	San Francisco	Seattle	Philadelphia	New York City	NELP Expert
<b>Information/Outreach:</b>						
Offer Training	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>1</sup>	Agree <sup>2</sup>
Outreach	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>1</sup>	Agree <sup>2</sup>
Social Media	Yes <sup>2</sup>	Not at this time <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>1</sup>	Agree <sup>2</sup>
<b>Intake:</b>						
Active monitoring of job posting websites (e.g. Craigslist)	No - 1. high penalty structure encourages compliance and 2. success of outreach/education <sup>2</sup>	Not at this time <sup>2</sup>	Yes <sup>1</sup>	Not at this time <sup>2</sup>	Yes <sup>2</sup>	Agree <sup>2</sup>
OWS initiated charges/complaints and/or random audits	No - penalty fines should incentivize people to make complaints. Most effective method of oversight <sup>2</sup>	Not at this time <sup>2</sup>	Yes - director initiated complaint for anonymity of complainant, remove fear of retaliation. <sup>1</sup>	No - not unless it is a result of an order. Audits are part of the complaint investigation. <sup>2</sup>	Yes - but focus more on proactive monitoring rather than random audits <sup>2</sup>	Agree <sup>2</sup>
Complaints can be filed within 365 days from alleged violation	Yes <sup>*</sup>	No - 60 days <sup>1</sup>	No - Amended from 180 days to 3 years <sup>*</sup>	No - 300 days <sup>*</sup>	Yes <sup>1</sup>	Agree <sup>2</sup>
Fast track system for complaints - application vs investigation	Yes <sup>2</sup>	No - does not currently have the need to fast track complaints. Review and investigated as they are received. <sup>2</sup>	No - does not currently have the need to fast track complaints. Complaints are processed fairly quickly. <sup>2</sup>	No - when program first started initially received only application complaints, but program has expanded beyond this <sup>2</sup>	Yes - they have a proposed expedited procedure to streamline process in future. <sup>2</sup>	Agree <sup>2</sup>
<b>Investigation:</b>						
Specify list of exemptions, including jobs that involve children and vulnerable adults.	Yes <sup>*2</sup>	Yes <sup>*</sup>	Yes <sup>*</sup>	Yes <sup>*</sup>	Yes <sup>*1</sup>	Disagree - criminal background is still performed but just at a later point in process, so exemptions are unnecessary and could complicate process. More effective to include "conflict with federal or state law" statement. <sup>2</sup>
Include clause for rules and regulations	Not at this time <sup>2</sup>	Yes <sup>*</sup>	Yes <sup>*</sup>	Not at this time <sup>2</sup>	Yes <sup>*</sup>	Agree <sup>2</sup>
Make a requirement to post notification in the workplace or on website	No - education and outreach are most effective method of oversight <sup>2</sup>	Yes <sup>*</sup>	Yes <sup>*</sup>	Yes <sup>*</sup>	No - notices are posted for general state law protections, but not specifically for Ban the Box. <sup>2</sup>	Agree <sup>2</sup>
Require employer to have a "Fair Chance" process if adverse action is taken, may include: notify in writing; provide applicant with copy of assessment; hold period (suggested 5 days) to allow applicant to provide documentation of errors or evidence of rehabilitation.	No <sup>*2</sup> - does not require the job to be held open after adverse action, but applicant/employee has 30 days to request copy of assessment from employer. If after 30 days, applicant can file complaint with OHR and they will open investigation. OHR can request for this information on their behalf after this time period.	Yes <sup>1</sup> - 7 days hold job	Yes <sup>*</sup> - 2 days hold job	Yes <sup>*</sup> - 10 days to allow applicant to respond <sup>2</sup>	Yes <sup>1</sup> - at least 3 days to hold job	Agree <sup>2</sup>



BCA's Recommendation for Ordinance	District of Columbia	San Francisco	Seattle	Philadelphia	New York City	NELP Expert
Require employers to assess relationship between job duties and implications of past conviction prior to start of employment process and require individual assessments, in line with EEOC guidelines, if adverse action is taken.	Yes*	Yes*	Yes*	Yes*	Yes <sup>1</sup>	Agree - as long as it ensures that the reasons do not violate EEOC guidelines. <sup>2</sup>
Preserve applicant documentation for three years - All reasons for terminations.	No - no time requirement in ordinance. It is in employer's best interest to retain records of the reasons adverse action is taken so that if they are ever audited they can provide documentation. <sup>2</sup>	Yes - 3 years*	Yes - 3 years <sup>1</sup>	No - they do not require for Ban the Box, but for other labor laws they do. <sup>2</sup>	No - during investigation, employer is notified that they must preserve documentation <sup>2</sup>	Agree <sup>2</sup>
If there is a hearing officer - Mediation between complainant and employer as optional/voluntary.	Yes - mandatory in process* <sup>2</sup>	Yes - voluntary and either party can request during any part of process <sup>1</sup>	Yes - if it is requested, but not required in process. <sup>2</sup>	Yes, a mediation program exists but it is optional. <sup>2</sup>	No - they do not have a formal mediation process with a neutral party, but they can have a reconciliation process between employer and complainant in order to settle a case. <sup>2</sup>	Agree - as long as it is a strong process that is effective means for enforcement and is consistent between labor laws <sup>2</sup>
<b>Implementation:</b>						
High Penalty tier - incentivize employers to comply with law and applicants to come forward with complaints.	Yes - tiers based on # of employees, lowest tier up to \$1000 - highest tier is \$5000 per violation.* Note: no penalties have been paid, as of yet. Goal is education and compliance which usually occurs during mediation process. <sup>2</sup>	Not at this time <sup>1</sup> Currently, they have a 1st violation warning, 2nd violation up to \$50 penalty, subsequent up to \$100.* Penalties are payable to the City to offset costs of program. <sup>1</sup>	Yes - Amended to 1st violation - up to \$500 to each aggrieved party, 2nd violation - up to \$1000 to each aggrieved party, and 3rd violation - up to \$5000 to each aggrieved party* <sup>2</sup> Penalties are payable to complainant, if there is one.* Violation tiers are based on the # of violations within a 10 year period. OLS takes steps to prevent the occurrence of a 2nd violation - monitored compliance and training. <sup>2</sup>	Yes - high penalty tier of up to \$2000, and this is paid to the City. *Amendments recently changed this so that they can also issue "cease and desist orders", compensatory/punitive damages and attorney's fees. Since they now have private right of action, these fees can be issued to complainant <sup>2</sup>	Yes - Proposed penalty tiers for Commission-initiated complaints - based on # of employees, lowest tier is \$500 to \$3500; 2nd violation within 3 years increases greatly, up to \$10,000 <sup>1</sup> No penalties collected to date. Civil penalties are payable to the City general fund. CCHR can elect to go through the complaint process where they can set penalties. If there is a complainant involved, then they are entitled to damages. If they go to court, they can receive punitive damages <sup>2</sup>	Agree - recommended strong penalty structure to be effective. <sup>2</sup>
Fines per violation for non compliance - discourage employers from withholding documentation	No - 1. high penalty tier encourages employers to comply and 2. have subpoena power. <sup>2</sup>	No - would like to reconsider penalty structure in future and add some sort of restitution to harmed employee/applicant. <sup>2</sup>	Yes* - amended to include fines. \$500 - \$1000. Fines payable to General Fund. Retaliation is \$1000 per aggrieved, up to \$20000/year.* <sup>2</sup>	No - this is included in penalty structure. <sup>2</sup>	No - fines determined by penalty structure. <sup>1</sup>	Agree - should also include if a records are maintained by employer, then it is violation of law absent convincing evidence otherwise <sup>2</sup>
OWS should have subpoena power.	Yes <sup>2</sup>	Yes <sup>1</sup>	Yes* <sup>2</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	Agree <sup>2</sup>

**KEY:**

<b>Cities:</b>	
Yes	The city currently has a similar process implemented in its Ban the Box program.
Not At This Time	The city currently does not implement a similar process in their program, but it sees the benefit of the recommendation and may be considering implementation of a similar process at a future time.
No	The city does not implement a similar process and indicates concerns on why the program would not benefit from the recommendation.
<b>NELP Expert:</b>	
Agree	Agrees that this recommendation could be beneficial.
Disagree	Does not agree that recommendation would be beneficial and indicates concerns on why the program would not benefit from its implementation.
<b>Source:</b>	
*	From ordinance or amendments
<sup>1</sup>	From other document (Rules and Regulations, FAQ's, handouts, reports, etc.)
<sup>2</sup>	Phone/email discussion