

ORDINANCE NO. _____

An ordinance adding Article 22 to Chapter I of Division 10 of the Los Angeles Administrative Code to limit City contractors' consideration of the criminal history of applicants for employment.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 22 is added to Chapter I of Division 10 of the Los Angeles Administrative Code to read as follows:

CHAPTER 1, ARTICLE 22

**CITY CONTRACTORS' USE OF CRIMINAL HISTORY FOR
CONSIDERATION OF EMPLOYMENT APPLICATIONS**

SEC. 10.48. PURPOSE.

The City awards many contracts to private firms to provide services to the public and to City government. The City intends that the policies underlying this article serve to guide all of these expenditures of funds to the extent allowed by the law.

Studies show that the disclosure of a criminal conviction by job applicants on application forms often automatically excludes them from consideration of employment regardless of any relationship between the conduct underlying the conviction and the duties and responsibilities of the job, the length of time since the conduct occurred and the risk of the conduct reoccurring on the job. Automatic exclusion of persons with prior criminal convictions from consideration of employment prevents otherwise qualified applicants from obtaining employment and may result in employers hiring less qualified candidates, increases the risk of recidivism of persons so excluded from consideration and disparately impacts persons of certain races and national origin.

In 2013, the State Legislature passed and the Governor signed Assembly Bill No. 218, which amended the State's Labor Code to prevent the State and local governments from seeking disclosure of conviction history from employment applicants until the agency has determined the applicant meets the minimum employment qualifications. In April 2014, the City of Los Angeles implemented AB 218 by removing questions regarding criminal convictions from employment applications, reviewing a job applicant's criminal history only after a position eligibility list is prepared, and considering, among other things, the relationship between the conviction and the duties of the position.

In November 2015, the President of the United States announced that the federal government and federal contractors could not consider job applicants' criminal convictions in the initial stages of the employment process. Numerous other cities

have similarly adopted regulations preventing inquiry into job applicants' criminal history until after it is determine they are qualified for the position.

This ordinance expands the rights afforded applicants for employment with the City's contractors and subcontractors. Specifically, such employers will be prohibited from inquiring into an employment applicant's criminal history unless and until a conditional offer of employment is made to the applicant. An employer that fails to comply with the requirements of this ordinance will be subject to, among other things, termination of its City contract.

SEC. 10.48.1. DEFINITIONS.

The following definitions shall apply to this article:

A. **"Adverse Action"** means an Employer's withdrawal or cancellation of a Conditional Offer of Employment made to an Applicant or a failure or refusal to employ the Applicant.

B. **"Applicant"** means an individual who submits an application or other documentation for Employment.

C. **"Awarding Authority"** means any subordinate or component entity or person of the City, such as a department or Board of Commissioners that has the authority to award or enter into a Contract. This shall not include any department that has control of its own funds under Charter Section 500(c).

D. **"City"** means the City of Los Angeles and all Awarding Authorities.

E. **"Conditional Offer of Employment"** means a Contractor's or Subcontractor's offer of Employment to an Applicant conditioned only on an assessment of the Applicant's Criminal History, if any, and the duties and responsibilities of the Employment position.

F. **"Contract"** means any agreement, franchise, lease, or concession, including agreements for any occasional professional or technical personal services, for the performance of any work or service, the provision of any materials or supplies, or the rendition of any service to the City of Los Angeles or to the public, which is let, awarded or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

G. **"Contractor"** means any Employer that enters into a Contract with the City.

H. **"Conviction"** means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or

misdemeanor, provided that the conviction is one for which the person has been placed on probation, fined, imprisoned or paroled.

I. **"Criminal History"** means information regarding one or more Convictions, transmitted orally or in writing or by any other means, and obtained from any source, including, but not limited to, the individual to whom the information pertains and a Criminal History Report.

J. **"Criminal History Report"** means any criminal history report, including, but not limited to, those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement or police agencies, or courts, or by any consumer reporting agency or business or employment screening agency or business.

K. **"Designated Administrative Agency" or "DAA"** means the Department of Public Works, Bureau of Contract Administration, who shall bear administrative responsibilities under this article.

L. **"Employee"** means an individual who has Employment with an Employer.

M. **"Employer"** means any individual, firm, corporation, partnership, labor organization, group of persons, association, or other organization however organized, that enters into a Contract with the City, or a contract with a Contractor or Subcontractor, and that employs ten or more Employees, including the owner or owners and management and supervisory employees. "Employer" does not include any local governmental unit or any unit of the state government or the federal government.

N. **"Employment"** means any occupation, vocation, job or work performed in the City, including, but not limited to, temporary or seasonal work, part-time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency, or any form of vocational or educational training with or without pay.

O. **"Fair Chance Process"** means an opportunity for an Applicant to provide information or documentation to an Employer regarding the accuracy of his/her Criminal History or Criminal History Report or that should be considered in the Employer's assessment performed pursuant to Section 10.48.3(A), such as evidence of rehabilitation or other mitigating factors.

P. **"Inquire"** means any direct or indirect conduct intended to gather Criminal History information from or about an Applicant, using any mode of communication, including but not limited to application forms, interviews and Criminal History Reports.

Q. **“Subcontractor”** means any Employer that enters into a contract with a Contractor or Subcontractor to assist in performing the services to the City under a Contract.

SEC. 10.48.2. EMPLOYMENT APPLICATION PROCEDURES.

A. A Contractor or Subcontractor shall not include on any application for Employment any questions that seek the disclosure of an Applicant’s Criminal History.

B. A Contractor or Subcontractor shall not, at any time or by any means, inquire about or require disclosure of an Applicant’s Criminal History unless and until a Conditional Offer of Employment has been made to the Applicant.

SEC. 10.48.3. EMPLOYER ASSESSMENT OF CRIMINAL HISTORY.

A. A Contractor or Subcontractor shall not take an Adverse Action against an Applicant to whom a Conditional Offer of Employment has been made based on an Applicant’s Criminal History unless the Contractor or Subcontractor performs a written assessment that effectively links the specific aspects of the Applicant’s Criminal History with the risks inherent in the duties of the Employment position sought by the Applicant. In performing the assessment, the Contractor or Subcontractor shall, at a minimum, consider the factors identified by the United States Equal Employment Opportunity Commission and other factors as may be required by rules and guidelines promulgated by the DAA.

B. A Contractor or Subcontractor, prior to taking an Adverse Action against an Applicant, shall provide that person a Fair Chance Process, including the provision of written notification of the proposed Adverse Action, a copy of the written assessment performed pursuant to Section 10.48.3(A) and any other information or documentation supporting the Employer’s proposed Adverse Action. The Contractor or Subcontractor shall not take an Adverse Action or fill the Employment position sought by the Applicant for a period of at least five business days after the Applicant is informed of the proposed Adverse Action in order to allow the Applicant to complete the Fair Chance Process. If the Applicant provides the Contractor or Subcontractor with any information or documentation pursuant to the Fair Chance Process, then the Contractor or Subcontractor shall consider the information or documentation and perform a written reassessment of the proposed Adverse Action. If the Contractor or Subcontractor, after performing the reassessment of the proposed Adverse Action, takes an Adverse Action against the Applicant, then the Contractor or Subcontractor shall notify the Applicant of the decision and provide the Applicant with a copy of the written reassessment.

SEC. 10.48.4. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.

A. Contractors and Subcontractors shall state in all solicitations or advertisements seeking Applicants for Employment that they will consider for

employment qualified Applicants with Criminal Histories in a manner consistent with the requirements of this article.

B. Contractors and Subcontractors shall post a notice informing Applicants of the provisions of this article in a conspicuous place at every workplace, job site or other location in the City under the Contractor's or Subcontractor's control visited by Employment Applicants, and shall send a copy of the notice to each labor union or representative of workers with which they have a collective bargaining agreement or other agreement or understanding that is applicable to Employees in the City.

SEC. 10.48.5. RETALIATION PROHIBITED.

A Contractor or Subcontractor shall not discharge, reduce the compensation of, or otherwise take any adverse employment actions against any Employee for complaining to the City with regard to the Contractor's or Subcontractor's compliance or anticipated compliance with this article, for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting any rights under this article.

SEC. 10.48.6. RECORD RETENTION.

Contractors and Subcontractors shall retain Applicants' Employment applications and the written assessment and reassessment performed pursuant to this article for a period of three years following the receipt of an Applicant's Employment application. Contractors and Subcontractors shall, upon request, provide the records and documents or access to the records and documents to the DAA in an administrative investigation under this article.

SEC. 10.48.7. EXCEPTIONS FROM EMPLOYMENT APPLICATION PROCEDURES.

Sections 10.48.2, 10.48.3 and 10.48.4(A) do not apply in the following circumstances:

A. The Contractor or Subcontractor is required by law to obtain information regarding a Conviction of an Applicant.

B. The Applicant would be required to possess or use a firearm in the course of his or her Employment.

C. An individual who has been convicted of a crime is prohibited by law from holding the position sought by the Applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated or judicially dismissed following probation.

D. A Contractor or Subcontractor is prohibited by law from hiring an Applicant who has been convicted of a crime.

SEC. 10.48.8. ENFORCEMENT.

A. An Applicant for Employment or Employee alleging violation of this article may, within one year of the alleged violation, bring a civil action in a court of competent jurisdiction against a Contractor or Subcontractor, and shall be awarded the penalty set forth in this article and any other legal and/or equitable relief as may be appropriate to remedy the violation.

B. Compliance with this article shall be required in all Contracts to which it applies, and each Contract shall provide that violation of this article shall constitute a material breach thereof and entitle the City to terminate the Contract and otherwise pursue available legal remedies.

C. An Applicant for Employment with a Contractor or Subcontractor alleging violation of Sections 10.48.2, 10.48.3 or 10.48.4, or an Employee alleging violation of Section 10.48.4 or 10.48.5 may, within one year of the alleged violation, report the alleged violation to the DAA, which shall investigate the complaint. The Contractor or Subcontractor shall cooperate in such investigation. The DAA, as a part of its investigation, may request the Board of Public Works to issue a subpoena for Contractor or Subcontractor records and documents and for other books, papers, records and other items relevant to the enforcement of this article. Whether based upon a complaint or its own investigation of a violation of any of the provisions of this article, where the DAA has determined that a Contractor or Subcontractor has violated this article, the DAA shall issue a written notice to the Contractor or Subcontractor that the violation is to be corrected within ten days and impose an administrative fine as set forth in this article. In the event that the Contractor or Subcontractor has not demonstrated to the DAA that the Contractor or Subcontractor has timely cured the violation, the DAA may then:

(1) Request the Awarding Authority to declare a material breach of the Contract and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the Contract and the return of any monies paid by the City for services not yet rendered;

(2) Request that the Awarding Authority document the determination in the Contractor Evaluation required under Los Angeles Administrative Code Section 10.39, et seq.;

(3) Require that the Contractor document the determination in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40, et seq.; and/or

(4) Request the City Attorney to bring a civil action against the Contractor or Subcontractor seeking an order declaring that the Contractor or Subcontractor violated this article and/or preventing the Contractor or Subcontractor from future violations of this article.

D. The DAA shall establish rules governing the administrative process for investigation and enforcement of alleged violations and appeal of determinations of violations. The rules shall include procedures for: (i) providing notice of an alleged violation to the Contractor or Subcontractor; (ii) providing the Contractor or Subcontractor with the opportunity to respond to the notice; (iii) providing notice to the Contractor or Subcontractor and the Applicant or Employee of the DAA's determination; and (iv) providing the Contractor or Subcontractor and the Applicant or Employee the opportunity to appeal the DAA's determination to a hearing officer. The hearing officer's decision shall constitute the City's final decision, and any review of that decision shall be made by the filing of a petition for writ of mandate in the Superior Court of the County of Los Angeles under Section 1094.5 of the Code of Civil Procedure.

E. The DAA shall maintain a record of the complaints it receives alleging violations of this article and the resolution of complaints. The DAA shall compile a summary of the record of the complaints on an annual basis and report that summary to the Council.

F. Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SEC. 10.48.9. PENALTY/ADMINISTRATIVE FINE SCHEDULE.

A. Penalties and administrative fines for a Contractor or Subcontractor violation of any provision of this article, other than Sections 10.48.4, 10.48.6 or failure to cooperate under 10.48.8, shall be up to \$500 for the first violation, up to \$1,000 for the second violation and up to \$2,000 for the third and subsequent violations. The penalties and administrative fines for a Contractor or Subcontractor violation of Sections 10.48.4, 10.48.6 or failure to cooperate under 10.48.8 shall not exceed \$500 for each violation.

B. The amount of the penalty or administrative fine imposed may be based on the willfulness of the Contractor's or Subcontractor's action(s) and other material factors as determined by the DAA.

C. For purposes of determining the penalty or administrative fine to be imposed for Contractor or Subcontractor violations of the article may be treated as separate violations and subject to the penalty or administrative fine amounts set forth therein.

D. Administrative fines shall be payable to the City of Los Angeles and due within 30 days from the date of notice to the Employer. The failure of any Employer to

pay an administrative fine within 30 days shall result in the assessment of a late fee. The amount of the late fee shall be ten percent of the total amount of the administrative fine assessed for each month the amount is unpaid, compounded to include already accrued late administrative fines that remain unpaid.

E. The failure of any Employer to pay amounts due to the City under this article when due shall constitute a debt to the City. The City may file a civil action or pursue any other legal remedy to collect such money.

F. The amount of the administrative fine paid by a Contractor or Subcontractor for a violation of this article may be awarded by the City to the Applicant or Employee up to a maximum of \$500 per violation.

SEC. 10.48.10. IMPLEMENTATION.

The DAA shall promulgate guidelines and rules consistent with this article for the implementation of the provisions of this article. Guidelines and rules shall have the force and effect of law.

SEC. 10.48.11. CONFLICTS.

Nothing in this article shall be interpreted or applied so as to create any requirement, power or duty in conflict with federal or state law. Specifically, the requirements of this article are not intended to limit, restrict or nullify any duty, right or obligation of an Applicant or an Employer under the Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e, et seq.), and the enforcement guidelines promulgated by the U.S. Equal Employment Opportunity Commission.

SEC. 10.48.12. PROMOTION OF GENERAL WELFARE.

In enacting and implementing this article, the City is assuming an undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which the City or its officers and employees are liable for any damages, including monetary damages, to any person who claims that such breach proximately caused injury. This article does not create a legally enforceable right against the City.

SEC. 10.48.13. SEVERABILITY.

If any part or provision of this article, including, but not limited to, a section, subsection, paragraph, sentence, phrase or word, or the application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this article. The City Council hereby declares that it would have adopted this article and each and every section, subsection, paragraph, sentence, phrase and word hereof not declared

invalid or unconstitutional, without regard to whether any portion of this article would be subsequently declared invalid or unconstitutional.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting on _____.

HOLLY L. WOLCOTT, City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
CURTIS S. KIDDER
Assistant City Attorney

Date 9-23-2016

File No. _____