



**City of Rochester**

**City Clerks Office**

# **Certified Ordinance**

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**Rochester, N.Y., \_\_\_\_\_**

## **TO WHOM IT MAY CONCERN:**

I hereby certify that the following is a true copy of an ordinance which was duly passed by the Council of the City of Rochester on **May 20, 2014** and **Approved** by the Mayor of the City of Rochester, and was deemed duly adopted on **May 22, 2014** in accordance with the applicable provisions of law.

Ordinance No. 2014-155

**Amending Chapter 63 Of The Municipal Code With  
Regard to Fair Employment Screening, As  
Amended**

**BE IT ORDAINED** by the Council of the City of Rochester as follows:

Section 1. Chapter 63 of the Municipal Code of the City of Rochester is hereby amended by adding a new Article II thereto to read as follows:

### **Article II. Fair Employment Screening**

#### **§63-12 Fair Employment Screening**

The City of Rochester, its vendors, and any employer located within the City of Rochester shall not make any inquiry regarding or pertaining to an applicant's prior criminal conviction on any initial employment application. Consideration of an applicant's prior criminal conviction(s) shall take place only after an employment application is submitted and after any initial employment interview.

#### **§63-13 Definitions**

For purposes of this article, the following terms shall have the following meanings:

- A. "Applicant": Any person considered or who requests to be considered for employment by an employer.
- B. "City": The City of Rochester, its departments, administrative units and agencies.
- C. "Criminal Conviction": ~~Any judgment of conviction of a criminal offense in this state or any other jurisdiction, including but not limited to adjudication as a juvenile delinquent or youthful offender.~~ Entry of a plea of guilty, or a verdict of guilty, for a misdemeanor or felony offense in this state or any other jurisdiction.
- D. "Employment": Any work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary, job placement, referral, or other employment agency, for any work or position for which the primary place of work is located within the City of Rochester. "Employment" shall not, for the purposes of this article, include employment by any government law enforcement agency or any position classified as a police officer or peace officer pursuant to the Criminal Procedure Law.
- E. "Employer": The City, its vendors, or any entity that employs persons in a any position for which the primary place of work is located within the City of Rochester including a person, partnership, company, business corporation, limited liability company, public corporation, labor organization, not-for-profit corporation, or association, ~~including but not limited to~~ "Employer" shall also include temporary, job placement, referral, or other employment agencies. "Employer" shall not include an employer with fewer than four persons in ~~his or her~~ its employ.
- F. "Interview": Any direct contact by the employer with the applicant whether in person or by telephone, to discuss the employment being sought or the applicants' qualifications.
- G. "Vendor": Any vendor, contractor, or supplier of goods or services to the City of Rochester, including vendors located outside the City of Rochester limits.

#### §63-14 Fair Employment Screening Standards

- A. It shall be an unlawful discriminatory practice for the City, its vendors, and any employer located within City limits to make any inquiry regarding, or to require any person to disclose or reveal, any

criminal conviction during the application process. The “application process” shall be deemed to begin when the applicant inquires about the employment sought and shall end when an employer has conducted an initial employment interview or made a conditional offer of employment.

- B. If an employer does not conduct an interview, that employer must inform the applicant whether a criminal background check will be conducted before employment is to begin.
- C. The City, its vendors, and any employer hiring for licensed trades or professions, including positions such as interns and apprentices for such licensed positions, may make an inquiry of applicants about prior criminal convictions if such inquiry is required by a licensing authority or by New York State or Federal Law.
- D. The City, its vendors, and any employer hiring for positions where certain convictions are a bar to employment in that position under New York State or Federal Law, shall not be prohibited from making inquiries about those convictions during the application process.
- E. The City, its vendors, and any employer shall comply with Article 23-A of the New York State Correction Law and the Fair Credit Reporting Act, 15 USC §1681, et seq. when considering an applicant’s prior criminal convictions in determining suitability for employment. In accordance with Article 23-A, nothing in this ordinance shall be construed to limit an employer’s authority to withdraw conditional offers of employment for any lawful reason, including the determination that the candidate has a conviction that bears a direct relationship to the duties and responsibilities of the position sought, or that hiring would pose an unreasonable risk to property or to the safety of individuals or the general public.
- F. In compliance with Executive Law § 296 subdivision 16 (Human Rights Law) and the Family Court Act, employers are prohibited from asking at any time for applicants to disclose information about any arrest that resulted in a Youthful Offender Adjudication pursuant to Criminal Procedure Law § 720.35; any arrest that was processed as a Juvenile Delinquency proceeding in Family Court; any arrest that resulted in a sealing pursuant to Criminal Procedure Law (CPL) § 160.50 or CPL § 160.55; any conviction that was sealed pursuant to CPL § 160.58, unless said inquiry is specifically required or permitted by New York State or Federal law.

### §63-15 Exceptions

- A. The prohibitions of this article shall not apply if the ~~inquires~~ inquiries prohibited herein are specifically authorized by any other applicable law.
- B. The prohibitions of this article shall not apply to applicants for positions in the City Police Department or the Fire Department, or to any other employer hiring for “police officer” and “peace officer” positions, as defined by Criminal Procedure Law §1.20 or §2.10.

### §63-16 Enforcement

- A. Any person aggrieved by a violation of this Article may commence a civil action or proceeding for injunctive relief, damages, or other appropriate relief in law or equity against any person or employer who violates this Article. In any such action or proceeding, the ~~court, may~~ court may allow the party commencing such action or proceeding, if such party prevails, costs and reasonable attorney’s fees as part of the relief granted.
- B. Any action brought for violation of this chapter must be commenced within one year after the alleged violation of this article.
- C. The remedies provided herein shall be separate and distinct from remedies provided in other laws, rules or regulations, and shall not be construed by any court to be a prerequisite to an action or proceeding commenced pursuant to such other laws, rules or regulations. The provisions of this ordinance shall not be construed to diminish the rights of an applicant under any other law.
- D. The Corporation Counsel may, in his or her discretion, bring an action to restrain or prevent any violation of this Article or any continuance of any such violation, in any court of competent jurisdiction and may further seek the imposition of the following penalties or a combination thereof:
  - (1) A penalty of five hundred dollars for the first violation of this Article;
  - (2) A penalty of one thousand dollars for each subsequent violation of this Article.

Section 2. The City shall make information about the provisions of this ordinance available to the public and to vendors and other persons who may be interested in it.

Section 3. The criminal history record checks in connection with employment required by Section 6B-2 of the City Charter shall be conducted in compliance with the provisions of this article.

Section 4. This ordinance shall take effect 180 days after it is adopted.

Strikeout indicates deleted text, new text is underlined

Passed by the following vote:

Ayes - President Scott, Councilmembers Conklin, Haag, McFadden, Miller, Ortiz, Palumbo, Patterson, Spaul - 9.

Nays - None - 0.

**Attest**

Hayel L. Washington  
City Clerk