

**AN ORDINANCE ESTABLISHING FAIR CHANCE HIRING STANDARDS IN THE CITY, CREATING A CIVIL PENALTY, AND CREATING AN OFFENSE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**Part 1.** Title 4 of the City Code is amended by adding a new Chapter 4-15 to read:

**CHAPTER 4-15. FAIR CHANCE HIRING.**

**§4-15-1 FINDINGS.**

(A) The council finds that denying an employment opportunity to an otherwise qualified person based on the person's criminal history that is not relevant to the job under consideration:

- (1) is unjust;
- (2) is detrimental to the health, safety, and welfare of the residents of the City;
- (3) prevents the reintegration of the person into the community;
- (4) creates a burden on public resources and law enforcement;
- (5) contributes to crime and recidivism; and
- (6) contributes to unemployment and harms the local economy.

(B) The council further finds that it is within the police power and the responsibility of the City to remedy the problems enumerated in subsection (A).

**§4-15-2 DEFINITIONS.**

In this chapter:

(A) **ADVERSE ACTION** means a refusal to hire, a refusal to promote, or the revocation of an offer of employment or promotion.

- 38 (B) APPLICATION means a written or oral expression of interest in a job by an  
39 individual made in compliance with the employer's established criteria for  
40 receiving expressions of interest.  
41
- 42 (C) CONDITIONAL EMPLOYMENT OFFER means an oral or written offer by an  
43 employer to employ an individual in a job that is conditioned solely on the  
44 employer's evaluation of the individual's criminal history.  
45
- 46 (D) CRIMINAL HISTORY means an arrest, conviction, plea of nolo contendere, or  
47 deferred adjudication arising from a felony criminal accusation, or a Class A or  
48 Class B misdemeanor criminal accusation, made under state law, federal law, or a  
49 comparable law of another state of the United States.  
50
- 51 (E) EMPLOYMENT means to work for an employer for pay. The term includes full  
52 time work, part time work, temporary or seasonal work, contract work, casual or  
53 contingent work, work through the services of a temporary or other employment  
54 agency, and participation in a vocational, apprenticeship, or educational training  
55 program.  
56
- 57 (F) EMPLOYER means a person, company, corporation, firm, labor organization, or  
58 association that employs at least fifteen individuals whose primary work location is  
59 in the City for each working day in each of 20 or more calendar weeks in the  
60 current or preceding calendar year. The term includes an agency acting on behalf  
61 of an employer. The term does not include:  
62
- 63 (1) the United States;
  - 64
  - 65 (2) a corporation wholly owned by the government of the United States;
  - 66
  - 67 (3) a bona fide private membership club (other than a labor organization) that is  
68 exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
  - 69
  - 70 (4) the state or a state agency; or
  - 71
  - 72 (5) a political subdivision of the state.  
73
- 74 (G) JOB means an employment position with an employer for which the employer has  
75 solicited or accepted applications and which the employer is currently attempting  
76 to fill.  
77

78 **§4-15-3. APPLICABILITY.**

- 79
- 80 (A) This chapter applies to an employer.
- 81
- 82 (B) This chapter does not apply to a job for which a federal, state, or local law  
83 disqualifies an individual based on criminal history.
- 84
- 85 (C) Nothing in this chapter limits an employer's authority to withdraw a conditional  
86 offer of employment for any lawful reason, including the determination that an  
87 individual's criminal history bears a direct relation to the duties and  
88 responsibilities of the job, and makes the individual unsuitable for the job.
- 89

90 **§4-15-4. FAIR CHANCE HIRING PRACTICES.**

- 91
- 92 (A) An employer may not publish or cause to be published information about a job  
93 covered by this chapter that states or implies that an individual's criminal history  
94 automatically disqualifies the individual from consideration for the job.
- 95
- 96 (B) An employer may not solicit or otherwise inquire about the criminal history of an  
97 individual in an application for a job covered by this chapter.
- 98
- 99 (C) An employer may not solicit criminal history information about an individual or  
100 consider an individual's criminal history unless the employer has first made a  
101 conditional employment offer to the individual.
- 102
- 103 (D) An employer may not refuse to consider employing an individual who submits an  
104 application for a job because the individual did not provide criminal history  
105 information before the individual received a conditional employment offer.
- 106
- 107 (E) An employer may not take adverse action against an individual because of the  
108 individual's criminal history unless the employer has determined that the  
109 individual's criminal history bears a direct relation to the duties and  
110 responsibilities of the job and makes the individual unsuitable for the job.
- 111
- 112 (F) An employer who takes adverse action against an individual based on the  
113 individual's criminal history must inform the individual in writing that the  
114 adverse action was based on the individual's criminal history.
- 115
- 116
- 117

118 **§4-15-5 RETALIATION PROHIBITED.**

119  
120 An employer may not take adverse action against an individual because the individual  
121 has reported a violation of this chapter by an employer, or has participated in an  
122 administrative proceeding under this chapter.  
123

124 **§4-15-11 ADMINISTRATION.**

125  
126 (A) The Equal Employment/Fair Housing Office shall:

- 127  
128 (1) educate employers and residents about this chapter;  
129  
130 (2) receive and investigate complaints alleging a violation of this chapter;  
131  
132 (3) enforce this chapter;  
133  
134 (4) seek voluntary compliance with this chapter before assessing a civil penalty;  
135 and  
136  
137 (5) adopt rules necessary to implement this chapter.  
138

139 (B) To be considered by the Equal Employment/Fair Housing Office, a complaint  
140 alleging a violation of this chapter must be filed with the Equal Employment/Fair  
141 Housing Office no later than the 90<sup>th</sup> calendar day after the date of the alleged  
142 violation.  
143

144 (C) If the Equal Employment/Fair Housing Office finds that a violation of this  
145 ordinance has occurred, and voluntary compliance cannot be obtained, the Equal  
146 Employment/Fair Housing Office may assess a civil penalty and provide notice  
147 to the employer as provided in §4-15-13.  
148

149 **§4-15-12 INVESTIGATION OF COMPLAINTS.**

150  
151 (A) The director of the Equal Employment/Fair Housing Office may subpoena records  
152 or testimony relevant to the investigation of a complaint under this chapter. A  
153 subpoena shall:

- 154  
155 (1) be directed to a person with knowledge or information relevant to a  
156 complaint under this chapter, or to a custodian of records relevant to a  
157 complaint under this chapter;

- 158 (2) be in writing and signed by the director of the Equal Employment/Fair  
159 Housing Office;
- 160 (3) identify the records or testimony to be produced under the subpoena;
- 161 (4) direct the person to whom it is issued to produce the records or provide the  
162 testimony identified in the subpoena at a specific place and time, which shall  
163 be not earlier than the 10<sup>th</sup> business day from the date of service of the  
164 subpoena;
- 165 (5) identify the individual complaint made under this chapter to which the  
166 subpoena relates;
- 167 (6) state that the subpoena is issued under the authority of this chapter for  
168 purposes of investigating a complaint under this chapter;
- 169 (7) state that failure to comply with the subpoena is an offense and punishable  
170 as a Class C misdemeanor under this Code; and
- 171 (8) be served on the person to whom it is directed by certified mail or personal  
172 delivery.

173 (B) A person commits an offense if the person fails to comply with a subpoena issued  
174 and served on the person as provided in subsection (A). The offense is punishable  
175 as a Class C misdemeanor as provided in section 1-1-99 of this Code. A culpable  
176 mental state is not a necessary element of the offense, or required to be proven for  
177 the offense.

178  
179  
180 **§4-15-13 CIVIL PENALTY.**

- 181 (A) An employer who fails to cease a violation of this chapter by the end of the 10<sup>th</sup>  
182 business day after the day the employer receives written notice of the violation  
183 from the City is liable to the City for a civil penalty of \$100 for that violation.
- 184 (B) An employer who violates Section 4-15-4(A) or Section 4-15-4(B) of this chapter  
185 is liable for no more than one civil penalty for each job to which the violation  
186 relates.
- 187 (C) This section does not create a criminal offense.

198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231

**Part 2.**

- (A) The Equal Employment/Fair Housing Office may not assess a civil penalty under section 4-15-12 for a violation of Chapter 4-15 that occurs before the second anniversary of the effective date of this ordinance.
- (B) For a violation of this chapter that occurs after the first anniversary of the effective date of this ordinance but before the second anniversary of the effective date of this ordinance, the Equal Employment/Fair Housing Office shall issue a written warning to the employer found to be in violation informing the employer that a civil penalty will be assessed for a violation that occurs after the second anniversary of the effective date of this ordinance.

**Part 3.** The council directs the city manager to design and provide a public education campaign to inform employers and residents of the requirements of Chapter 4-15.

**Part 4.** Except as provided in Part 2, this ordinance takes effect on March \_\_\_\_, 2016.

§  
§  
§

\_\_\_\_\_, 2016

\_\_\_\_\_  
Steve Adler  
Mayor

**APPROVED:** \_\_\_\_\_  
Anne L. Morgan  
City Attorney

**ATTEST:** \_\_\_\_\_  
Jannette S. Goodall  
City Clerk