

ORDINANCE NO. C-_____

An ordinance establishing fair chance hiring requirements; prohibiting employers from advertising restrictions on job applicants based on arrest or conviction records or inquiring into arrest or conviction records until after interview; providing for limited exceptions; establishing penalties; and enacting new chapters 09.02 and 09.03 of the Spokane Municipal Code.

WHEREAS, the use of arrest and conviction records can help ensure public safety, as long as that use is clearly defined and balances the need for equal opportunity and personal privacy; and

WHEREAS, criminal background checks are, however, often over-broadly and indiscriminately used to determine the risk of hiring an employee; and

WHEREAS, African Americans are 3.6% of Washington’s population, but account for nearly 19% of the state’s prison population; and

WHEREAS, Native Americans are 1.5% of the state population, but account for 4.3% of the state’s prison population; and

WHEREAS, economists estimate that by denying fair employment opportunities to people with criminal records, our nation’s gross domestic product lost \$57 to \$65 billion in 2008; and

WHEREAS, in August 2014, the Mayor publicly asked the Civil Service Commission and the Human Resources Department to remove the box on City employment applications that asks about criminal history and to adopt hiring policies that consider applicants first based on qualification, not criminal history, and that provide an individual assessment of whether a particular criminal record is sufficiently related to the job sought to justify disqualification from employment; and

WHEREAS, during the 2017 legislative session, Sen. Baumgartner sponsored a state-wide “ban the box” proposal, which passed the Senate, but which was not enacted into law; and

WHEREAS, the City of Spokane will continue to advocate for a state-wide Fair Chance Hiring policy; and

WHEREAS, in October, 2017, Spokane County placed its own “ban the box” policy into effect for applicants for County employment; and

WHEREAS, when qualified job seekers with criminal records are given the opportunity to work, they add to the tax base and local economy, and will therefore be less reliant on public benefits and social services; and

WHEREAS, the U.S. Equal Employment Opportunity Commission (“EEOC”), to maximize compliance with federal anti-discrimination law, issued a guidance document in 2012 which found that blanket bans on job applicants based on criminal backgrounds have a disparate impact based on race and national origin, therefore potentially violating Title VII of the Civil Rights Act of 1964, and recommended delaying inquiry of a job applicant’s conviction history until after the conclusion of a job interview, considering the job-relatedness of the conviction, taking into account length of time since conviction, and providing an individualized assessment affording the opportunity to correct any inaccuracies and to submit evidence of mitigation or rehabilitation; and

WHEREAS, the 2012 EEOC guidance currently applies to all employers within the City of Spokane with fifteen or more employees and the City desires to apply application of the EEOC guidance to all private employers within the City in order to level the playing field for all employers and job applicants; and

WHEREAS, “banning the box,” and providing the opportunity for employment to those with criminal backgrounds who have paid their debt to society and are seeking re-entry to the work force will reduce recidivism and reduce the overall reliance on public assistance, as well as reducing the crime rate in Spokane and increasing the overall productivity of our workforce; and

WHEREAS, implementing this fair chance hiring ordinance will advance the City’s strategic goal of “creat[ing] a compassionate community so that all people can feel safe, empowered, and welcome”; and

WHEREAS, one way the City can meet its goal of increasing the median household income is to help more people get back to work, and this is a goal shared by the fair chance hiring ordinance; and

WHEREAS, fair chance hiring practices also help reduce recidivism, which will assist in the accomplishment of the City’s goal of reducing property crime and making Spokane the safest Washington city of its size; and

WHEREAS, finally, giving people the chance to get back to work after they have paid their debt to society increases our social capital, because it increases the productive capability, social responsibility, cohesion and trust across our community.

NOW, THEREFORE, the City of Spokane does ordain:

Section 1. That there is enacted a new chapter 09.02 of the Spokane Municipal Code to read as follows:

Chapter 09.02 Fair Chance Hiring
Section 09.02.010 Findings

The City of Spokane finds that many qualified job applicants who have some kind of criminal record simply cannot obtain employment due to early screening or advertising which excludes them from the applicant pool. Many individuals who have criminal records could show themselves to be both highly-qualified and well-suited for employment in an interview, yet many do not even reach that stage due to screening criteria which make those with criminal records immediately disqualified for work. People with criminal records who cannot find work are forced to rely on public assistance and may be more likely than those who can secure work to re-offend.

Section 09.02.020 Purpose

- A. The City of Spokane intends to ensure that people who have completed a sentence for a past criminal conviction are not forever branded as unworthy or unable to participate in the life of the community, a central part of which is the ability to compete for employment in Spokane.
- B. The City intends to ensure that all employers have clear guidance on when they can inquire about criminal records of job applicants, in an effort to provide predictability, certainty, and fairness to both employers and job applicants.
- C. The City intends to assure employers that they may still conduct criminal background checks necessary for their specific employment purposes, and sets certain minimum and non-intrusive standards for doing so.
- D. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents for any injury or damage resulting from or by reason of any act or omission in connection with the implementation or enforcement of this chapter on the part of the City by its officers, employees or agents.
- E. Nothing in this chapter shall constitute or be construed to create a private right of action under state law or form a basis for relief in the state courts. It is the intent of this chapter that all causes of action for violations of the chapter shall lie with the City of Spokane municipal court.
- F. Nothing in this chapter shall be deemed to deny any person the right to institute any action or to pursue any civil or criminal remedy for the violation of such person's civil rights.

Section 09.02.030 Definitions

- A. "Arrest or Conviction Record" means any record or information about a citation or arrest for criminal conduct, including records relating to probable cause to arrest, and includes any record about a criminal or juvenile case filed with any court,

whether or not such a case resulted in a finding of guilt, has been vacated, or overturned on appeal.

- B. "Employment" means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training, whether offered with or without pay.
- C. "Employer" means any individual, partnership, association, corporation, business trust, contractor, temporary staffing agency, training and apprenticeship program, job placement, referral and employment agency, or any person or group of persons acting directly or indirectly and within the city limits of Spokane, in the interest of an employer in relation to an employee; provided, however, that the term "employer" does not include: (i) the City of Spokane (which is covered under chapter 09.03, SMC); (ii) the United States, any agency or instrumentality of the United States, or any corporation wholly owned by the government of the United States; (iii) the State of Washington; (iv) Spokane County; or (v) any federally-recognized Indian tribe.
- D. "Otherwise qualified" means that the applicant meets the basic criteria for the position as set out in the advertisement or job description without taking into account the existence or absence of a criminal conviction or arrest record.

Section 09.02.040 Applicability

- A. This chapter does not apply:
 - 1. to any employer hiring an employee who will have unsupervised access to children under the age of eighteen, a vulnerable adult as defined in RCW 74.34.020(21), or a vulnerable person as defined in RCW 9.96A.060;
 - 2. to employers who are expressly permitted or required under any federal or Washington state law to inquire into, consider, or rely on information about an applicant's arrest or conviction record for employment purposes;
 - 3. to any General Authority Washington law enforcement agency as defined in RCW 10.93.020(1); or
 - 4. where criminal background checks are specifically permitted or required under state or federal law.
- B. Nothing in this chapter shall be construed to protect criminal conduct or interpreted or applied as imposing an obligation on the part of an employer to provide accommodations or job modifications in order to facilitate the employment or continued employment of an applicant with an arrest or conviction record or who is facing pending criminal charges.
- C. Nothing in this chapter prohibits an employer from declining to hire an applicant with a criminal record or from terminating the employment of an employee with a criminal record.

Section 09.02.050 Prohibition

- A. No employer shall:

- A. advertise applicable employment openings in a way that excludes people with arrest or conviction records from applying, such as using advertisements which state “no felons,” “no criminal background,” or which otherwise convey similar messages;
 - B. include any question in an application for applicable employment, inquire orally or in writing, receive information through a criminal history background check, or otherwise obtain information about an employee’s arrest or conviction record until after the employee has participated in an in-person or video interview or received a conditional offer of employment;
 - C. use, distribute, or disseminate an employee’s arrest or conviction record except as required by law;
 - D. disqualify an employee from applicable employment solely because of a prior arrest or conviction unless the conviction is related to significant duties of the job or disqualification is otherwise allowed by this chapter; or
 - E. reject or disqualify an applicant for failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified for the position.
- B. Nothing in this chapter prohibits an employer from inquiring into or obtaining information about a job applicant’s criminal conviction or arrest record or background, and considering the information received regarding such record after the conclusion of a job interview, and using such information in a hiring decision.

Section 09.02.060 More Protective Employer Policies Unaffected

Nothing in this chapter shall be construed or interpreted to prohibit or discourage an employer from adopting employment policies that are more protective to job applicants than the requirements of this chapter.

Section 09.02.070 Penalty

Violation of this chapter is a class 1 civil infraction.

Section 09.02.080 Severability

If any court of law determines that any particular provision of this chapter is void or of no legal effect, the offending provision shall be deemed struck from this chapter and the remainder of the chapter shall continue unaffected.

Section 09.02.090 Effect on other laws

Nothing in this chapter shall be interpreted or applied to diminish or conflict with any requirements of state or federal law, including Title VII of the Civil Rights Act of 1964; the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as amended; the Washington State Fair Credit Reporting Act, chapter 19.182 RCW, as amended; the Washington

State Criminal Records Privacy Act, chapter 10.97 RCW, as amended; and state laws regarding criminal background checks, including those relating to individuals with access to children or vulnerable persons, such as RCW 43.43.830, *et seq*, as amended. In the event of any conflict between this chapter and a requirement of state or federal law, the state or federal requirement shall supersede the requirements of this chapter.

Section 2. That there is enacted a new chapter 09.03 to the Spokane Municipal Code to read as follows:

Chapter 09.03 Fair Chance Hiring Practices of the City of Spokane
Section 09.03.010 Purpose and Intent

The City of Spokane intends to ensure that its hiring practices for City employment provide applicants who have criminal arrest or conviction records an equal opportunity to obtain employment with the City. This chapter is intended to implement guidance first published by the Equal Employment Opportunity Commission (“EEOC”) over two decades ago and last updated in 2012, to ensure that the City of Spokane fully complies with federal law.

Section 09.03.020 Statement of Policy

- A. No person may be disqualified from employment with the City due solely, or in part, to the existence of a prior criminal arrest or conviction, or prior felony conviction that occurred within the past ten (10) years, unless the crime for which the individual was convicted directly relates to the job position sought.
- B. The City of Spokane’s use of applicant criminal arrest and conviction information will be based solely on the relationship between the past felony conviction and the potential risk to the City and its employees, residents, customers, and contractors.
- C. The City of Spokane will at all times comply with any federal or state law or regulation pertaining to background checks.

Section 09.03.030 Applicability

- A. This chapter does not apply to hiring practices conducted concerning the following City departments and job positions:
 - 1. The Spokane Police Department;
 - 2. Job positions requiring a limited police commission;
 - 3. Sworn positions in the Spokane Fire Department;
 - 4. Employees in job positions who have physical access to Criminal Justice Information Systems (“CJIS”) equipment, terminals, screens, interfaces, circuits, programs, manuals, codes, and/or data contained within CJIS;
 - 5. Job positions governed by the Washington Child Protection Act;

6. Positions involving the practice of law governed by the Washington Supreme Court or positions subject to federal or state background requirements; or
 7. Elected judges.
- B. Offers of employment for the following job positions shall be made contingent upon the completion of a criminal background check as mandated by state and/or federal law, the extent of which is to be determined by applicable law:
1. Positions with access to CJIS;
 2. Positions at City Water and Hydroelectric with unsupervised access to electric generating facilities;
 3. Positions that require a special police commission;
 4. Positions in a licensed day-care facility; and
 5. Positions that will have unsupervised access to (i) children under the age of sixteen, (ii) developmentally disabled persons, or (iii) vulnerable adults in facilities or operations that are licensed, relicensed, or contracted by the state of Washington.
- C. Offers of employment in the following job positions may, at the discretion of the applicable department head or the Mayor, be conditioned upon a criminal background check due to the City's interest in protecting City operations, residents, employees, contractors, and customers:
1. Senior leadership positions;
 2. Jobs requiring the handling of significant amounts of cash, generally, \$500 or more per week;
 3. Positions having access to confidential identity information which includes a name associated with a Social Security number, bank account information, credit card information, or other combination of information that could be used for identity theft or related criminal activity;
 4. Positions with unsupervised access to homes of residents;
 5. Positions with major fiduciary responsibilities; and
 6. Positions having broad, unsupervised access to City facilities after normal working hours.
- D. Each department shall be responsible for the cost of conducting criminal background checks for applicants for employment within that department.

Section 09.03.040 Administrative Procedures

The Human Resources Director shall promulgate any further administrative procedures consistent with, and required for the implementation of, this chapter. In the event of any conflict between this chapter and administrative procedures promulgated under the authority of this section, this chapter shall control.

Section 3. That section 01.05.170 of the Spokane Municipal Code is amended to read as follows:

Section 01.05.170 Penalty Schedule – Business Regulations

- A. For each subsequent violation by a person, the classification of infraction advances by one class. For each subsequent class 1 violation of the same prohibited activity after the first violation, the code enforcement officer and court (in the case of contested case hearings) are authorized to double the penalty imposed.
- B. Infraction/Violation Class.

SMC 1.05.170 PENALTY SCHEDULE – BUSINESS REGULATIONS		
Infraction		Violation Class
General		
SMC 4.04.020	Engaging in licensed activity without license	2
SMC 4.04.060	Failure to display license or insigne	3
SMC 8.01.070 SMC 10.40.020	Engaging in business without registration or itinerant vendor license or permit	1
SMC 8.12.020	No amusement device license, no amusement device operators or owners license	3
SMC 8.12.060	No current list of amusement device locations	3
SMC 10.23A.030(G)	Entertainment facility establishment operator/owner	1
SMC 10.25.010	Pruning, planting, or removing a public tree without a license	1
SMC 10.29.010(A)	Conducting an improper blasting operation	1
SMC 10.29.030	Heating mechanic	1
SMC 10.29.060(A)	Providing fire equipment service without Spokane Fire Department registration	1
SMC 10.34.020	Own, operate for-hire vehicle	2
SMC 10.34.110(D)	Owner of for-hire vehicle, allowing a non-licensed for-hire driver to operate his or her vehicle	1
SMC 10.49.040	Owning, operating or maintaining a medical cannabis collective garden	1
SMC 10.41A.040	Special police officer	2
SMC 10.45.040	Deal in used goods	2
SMC 10.48.050	Failure to register alarm system	2
SMC 10.48.170	Unlawful use of a security alarm system	3
SMC 13.02.0204	Solid waste collection or disposal	2
SMC 17G.010.100(C)(3)	Sewer installation	1

Chapter 09.01 SMC	Violation of the earned sick and safe leave ordinance	1
Chapter 09.02 SMC	Violation of the fair chance hiring ordinance	1
Fireworks		
SMC 10.33A.020(A)(2)	Conducting public display without a permit	Up to \$1,000
SMC 10.41A.040	Employ non-commissioned special police officer	3
SMC 10.41A.090	Violation of code by special police officer	1
Fire Code		
IFC 105.6.14 Chapter 33 IFC Chapter 10.33A SMC SMC 17F.080.060	Manufacture, storage, use, sale, handling of blasting agents, explosives without proper permit	1
IFC 105.6 IFC 105.7 SMC 17F.080.060	Conducting regulated code activities, operations, functions without permit	2
IFC 105.6.41	Conducting spraying or dipping application of flammable or combustible finishes (liquids or powders) for floor finishing or surfacing operations without a permit	2
IFC 2703.3	Unauthorized release, discharge of flammable, combustible liquids, petroleum waste products	1
SMC 15.01.500	Fail to comply with notice and order under Commute Trip Reduction Program	2
SMC 15.03.030	Fail to comply with requirement of posting restaurant's smoking designation	2

Section 4. That sections 1 and 3 of this ordinance shall be effective six months from the date of enactment and that section 2 shall be effective thirty days from enactment as stated in section 19(B) of the City Charter. Notwithstanding the foregoing, nothing in this ordinance prohibits an employer from voluntarily complying with sections 1 and 3 of this ordinance at any point in time earlier than the effective date stated in this section.

PASSED by the City Council on _____.

Council President

Attest:

Approved as to form:

City Clerk

Assistant City Attorney

Mayor

Date

Effective Date

DRAFT