

ORDINANCE NO. _____, SERIES 2013

AN ORDINANCE PROHIBITING THE CITY AND ITS VENDORS FROM ENGAGING IN HIRING POLICIES AND PRACTICES AGAINST PERSONS PREVIOUSLY CONVICTED OF CRIMES AND PROHIBITING THE PLACEMENT OF A “CHECK THE BOX” ON CITY JOB APPLICATIONS BY PERSONS HAVING CRIMINAL CONVICTIONS (As Amended by Substitution).

Sponsored By: Council Members Attica Scott, Barbara Shanklin, Mary Woolridge, David Tandy, Cheri Bryant Hamilton, David James, Tina Ward-Pugh, Rick Blackwell

~~WHEREAS, according to the National Employment Law Project (NELP), an advocacy group supporting ban-the-box laws, 14 states, and 32 cities and counties within those states have enacted “ban-the-box” legislation, which eliminates the requirement that ex-offenders check a box on employment applications indicating their status as an ex-criminal offender; and~~

~~WHEREAS, the numerous cities and municipalities have passed and adopted legislation outlining its standards for doing business with Vendors who have adopted said policies, practices, and standards that are consistent with “ban-the-box” legislation.~~

WHEREAS, in 2012, the United States Equal Employment Opportunity Commission (“EEOC”) issued guidelines urging employers to take into consideration when evaluating job applicants, to consider such factors like: the crime committed, how much time has elapsed since conviction and its relation to an applicant’s potential job; in addition states and municipalities that have enacted “ban-the-box” type legislation, have enumerated and adopted a number of similar factors to take into consideration when considering to hire an applicant who is an ex-offender.

WHEREAS, in keeping with the principles of rehabilitation of society's criminal offenders and restorative justice, to ameliorate the effects of massive unemployment amid widespread incarceration, and in an attempt to improve employment prospects in communities, it seems only fair, reasonable, just, and proper that the Louisville Metro Government adopt similar policies in line with other governing bodies throughout the nation to assist in restoring ex-offenders to a productive life in society, rather than relegating our neighbors to a life of unending retribution; and

~~**WHEREAS**, tougher sentencing laws for drug crimes have greatly contributed to the increased prison population throughout the country, thereby making post-incarceration unemployment an ever-increasing problem for many communities, and further, disproportionately impacting communities of color and low income populations; and~~

WHEREAS, there are approximately over 160,000 individuals in Metro Louisville, that have incidents on their criminal record that currently prevent them from gaining suitable employment; and

WHEREAS, it has been the practice of Louisville Metro Government, by and through its Human Resources Department, not to allow an employment applicant's past criminal history to be a sole determinate for gaining employment with Louisville Metro Government; and

WHEREAS, it is the desire of Louisville Metro Government to be a leader by example for other business entities that contract with Louisville Metro, and encourage them to adopt hiring practices similar to national and local business chains that have adopted similar type practices such as Wal-Mart, Inc. and Target Corporation.

WHEREAS, it is the intent of Louisville Metro Government to undertake steps to remove potential barriers for individuals with criminal records and who have fully completed their sentences to enter the workforce, and to codify the practice of Louisville Metro Government, by and through its Human Resources Department, not to allow an employment applicant's past criminal history to be a sole determinate for gaining suitable employment.

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: New sections of LMCO Chapter 112 are hereby created as follows:

§ 112.30 Prohibiting the City or its Vendors from Engaging in Certain Hiring Policies and Practices Against Persons Previously Convicted of Crimes

SECTION II: LMCO § 112.30(A) is created as follows:

- A) Definitions. For purposes of this section, the following definitions shall apply:
- 1) "Applicant"-means any person considered for, or who requests to be considered for employment by the City or by one of its Vendors.
 - 2) "Appointing Authority"- The Office of the Executive, an Elected Official, a Metro Officer or Metro Agency, having the authorized authority to appoint persons to employment positions within Metro Government.
 - 3) "Awarding Authority"-means any department, agency, or office of the City that authorizes a Vendor to perform requested goods and/or services.
 - 4) "City"-means the Louisville Metro Government or any department, agency or office thereof unless specifically excluded by this section.

- 5) “Conviction”-means any sentence arising from a plea or verdict of guilty that was entered in a court of law, which may include a sentence of incarceration, a suspended sentence, a sentence of probation or a sentence of unconditional discharge.
- 6) “Employment”-means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work, internship ~~and work through the services of a temporary or other employment agency~~; or any form of vocational or educational training with or without pay. Employment shall not, for purposes of this section, include any appointed or sworn positions within the City.
- 7) “Relationship to the Job”-means the nature of criminal conduct for which the person was convicted has a direct and/or specific negative bearing on a person’s fitness or ability to perform one or more of the duties or responsibilities necessarily related to the employment sought.
- 8) “Otherwise Qualified”-means any Applicant who meets all other criteria for a position of employment ~~or consideration for a position of employment.~~
- 9) “Vendor”-means any vendor, contractor, or supplier of goods and/or services to Louisville Metro Government.

SECTION III: LMCO § 112.30(B) is created as follows:

B) General Provisions

- 1) Except as otherwise provided by state and Federal law, the City shall not inquire about an Applicant’s conviction history until after it has been determined that the Applicant is otherwise qualified for the position. City job

applications shall not contain a “box” or inquiry regarding an applicant’s prior convictions and applicants shall not be required to check or otherwise fill in a “box” or inquiry regarding an applicant’s prior criminal conviction(s) .

- 2) If an If Once an Applicant reaches the final stages of consideration for hire, has been identified as otherwise qualified for the position, advanced to the next phase of the hiring process, the City shall: offer a conditional offer of employment to the Applicant, pending a conviction history check by the Human Resources Department. In the event a conviction history check of an Applicant is necessitated after a conditional offer of employment, the City shall provide standard written notification to the applicant advising: notify the Applicant, either in writing or in person, that a criminal background check will be conducted prior to any offer of employment with the City, at which time the Applicant will be given an opportunity to inform Louisville Metro of any criminal background history that the Applicant may have.
 - a) That the conviction history check is going to take place
 - b) That the Applicant will have an opportunity to rebut a decision by the City, should the City decide to retract the conditional offer of employment and;
 - c) What kinds of specific evidence the Applicant can present during this rebuttal.
- 3) In making a determination concerning a previous criminal conviction, the City shall consider the following factors:
 - a) The nature of the crime and its relationship to the job for which the person has applied; and

- b) The information pertaining to the degree of rehabilitation of the convicted person; and
 - c) The time elapsed since the conviction or release,
 - d) Any information produced by the person, or produced on their behalf, in regard to their rehabilitation and good conduct;
 - e) The age of the person at the time of occurrence of the criminal offense or offenses;
 - f) The gravity of the offense(s);
 - g) The probation or parole status of the Applicant;
 - h) The public policy of the City, as expressed in this chapter, to encourage the employment of persons previously convicted of one or more criminal offenses.
- 4) If, as a result of the conviction history check, the City finds a valid reason to refuse, rescind, or revoke the offer of a position to an Applicant, then the City must immediately notify the Applicant, in writing, of the potential adverse employment action, and provide the Applicant with a photocopy of the conviction history report with a highlight(s) of the particular conviction(s) that relates to the job's responsibilities, thus warranting a denial of employment with the City.
- 5) In the event the City finds a valid reason to refuse, rescind, or revoke the offer of a position to an Applicant, the Applicant shall have ten (10) business days, after receipt of notice from the City, to respond to the City regarding the conviction history report and the City shall provide the Applicant the

opportunity to present information rebutting the accuracy and/or relevance of the conviction history report, including information pertaining to any of the factors listed in LMCO § 112.30(B)(3). The City shall review all information and documentation received from the Applicant prior to taking any final action as to whether to hire said Applicant.

SECTION IV: LMCO § 112.30(C) is created as follows:

C) Exceptions:

- 1) The requirements under this section are not applicable to the following employment categories and the City shall ~~and may~~ inquire about an Applicant's conviction history before an ~~conditional~~ offer of employment for City employment, for employment positions that fall under the following categories:
 - a) Employment that involves the transfer and handling of cash amounts in excess of \$500 or that involve major fiduciary responsibilities (e.g.- employees charged with investing City funds, accounting, auditing, etc.).
 - b) Employment that involves access to confidential identity information which ~~includes a name associated with a~~ including but not limited to, social security numbers, bank account information, credit card information, or other combination of information that could be used for identity theft or related criminal activity.
 - c) Employment that involves or may involve unsupervised access to children or minors under the age of sixteen (16), developmentally disabled persons or vulnerable adults.

- d) Positions with unsupervised access to homes of residents, in which they work alone without direct supervision or they do not work in pairs or in teams of employees.
- e) Senior leadership positions (e.g.-the Officer of the Executive, Appointing Authority or senior managers reporting to the Appointing Authority).
- f) Civil Service or Merit employees, as defined under Kentucky law, or any other similar type employment as prohibited by state and Federal law.
- g) Louisville Metro Police Department, sworn and civilian
- h) Louisville Fire Department, sworn and civilian
- i) Louisville Metro Department of Corrections, sworn and civilian
- j) Emergency Management Agency/Metrosafe
- k) Emergency Medical Services
- l) Youth Detention Services
- m) Criminal Justice Commission

SECTION V: LMCO § 112.30(D) is created as follows:

D) Vendors

- 1) The City will give prefers to do business only with Vendors that have adopted and employ conviction history policies, practices and standards that are consistent with the City's standards outlined in this chapter, including the practice that initial Vendor employment applications not contain a "box" or a question of inquiry on the initial application regarding an applicant's prior criminal history and applicants shall not be required to check or otherwise fill in a "box" or respond to an inquiry regarding an applicant's prior criminal

history on the Vendor's initial employment application, unless as otherwise provided by or required by state and Federal law.

- 2) The standards established in this chapter and said criminal history policies shall be a part of the performance criteria when awarding City contracts.
Any deviation from the standards established under this chapter, are grounds for rejection, rescission, revocation, or any other termination of the contract.
The City shall retain at all times the authority to deny, rescind, revoke or terminate a contract with a Vendor for failing to comply with the standards established in this chapter.
- 3) Under exigent circumstances, a waiver of the standards established under this chapter shall be permitted by the City upon a showing of:
 - a) A written record of the details from the Vendor, of the Vendor's failure or refusal to conform to the City's criminal history standards
 - b) A written record from the Vendor of the reasoning behind the exigent circumstances to be provided to the City; and
 - c) A written analysis by the City of the exigent circumstances to cause the waiver to be granted.
- 4) The City shall retain at all times the authority to deny, rescind, revoke or terminate a contract with a Vendor for failing to comply with the standards established in this chapter.

SECTION VI: LMCO § 112.30(E) is created as follows:

- E) Severability

- 1) If any provision of these sections shall be held to be invalid by action of law, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION VII: This Ordinance shall take effect upon its passage and approval.

H. Stephen Ott
Metro Council Clerk

Jim King
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____