

## ORDINANCE No. 187459 As Amended

Add Code Removing Barriers to Employment to establish procedures for the use of criminal history information by employers within the City (Ordinance; add Code Chapter 23.10)

The City of Portland ordains:

Section 1. The Council finds:

1. Studies show that removing barriers to employment for people with criminal histories helps the economy. Putting people with criminal histories back to work increases their lifetime earnings and tax contributions and saves public funds by reducing recidivism.
2. Employing people with criminal histories also improves public safety. Employment has been shown to be a major factor in reducing further illegal activity by those with criminal histories.
3. Children and families suffer when people with criminal histories are unable to work. Upward mobility for those with criminal histories is significantly diminished. Family members often struggle to offer financial support to relatives with criminal histories, resulting in financial challenges or hardships to themselves. Many parents with criminal histories have trouble paying child support.
4. Routine criminal background checks by employers have increased dramatically in recent years. Many employers refuse to consider applicants with criminal histories. Many help-wanted advertisements disqualify those with criminal histories.
5. Barriers to employment based on criminal histories disproportionately affect historically disadvantaged communities and communities of color.
6. Studies show that personal contact and context can put a criminal history in perspective and give applicants with criminal histories a fair chance at employment. Many employers who conduct a qualitative assessment are willing to consider applicants with certain criminal histories who would be screened out by a blanket prohibition on hiring those with such a history. Having personal contact with potential employers has been shown to measurably reduce the negative effect of a criminal history. It has been shown that in many instances, applicants can compensate for their criminal histories based on their personality, qualifications and ability to make in-person contact with hiring authorities.
7. Many people with criminal histories can be valuable employees. Employers who have hired people with histories often find that they are excellent employees who are highly motivated to create better lives for themselves. Employers have noted that such employees work harder because they feel have something to prove and are appreciative of the opportunity afforded them.

8. While blanket exclusions of all persons with criminal histories from consideration for employment are harmful, employers do need the ability to determine whether a particular applicant's criminal history is disqualifying for a particular position. An employer who makes an individualized assessment of a person's criminal history and determines in good faith that a specific offense or conduct is job related for the position in question and consistent with business necessity is entitled to decline to hire that person for that job.
9. Governor Kate Brown signed H.B. 3025 on June 26, 2015, which prohibits Oregon employers from requiring an applicant to disclose a criminal conviction on an employment application or prior to an initial interview, unless the employer is exempt from the new law. H.B. 3025 takes effect January 1, 2016. The state law does not contain any preemption language. To the contrary, the statute expressly contemplates that local legislation may *require* employers to consider criminal history information, where the statute otherwise would preclude an employer from doing so.
10. Delaying conviction inquiries until an employer has made a conditional offer of employment increases the effectiveness of a fair-chance hiring policy. This component of the policy also offers several benefits to employers, such as clarity in decision-making and potential cost-reduction in the hiring process. Moreover, this may save investigative costs, as BOLI would be in a better position to ensure that the policy is upheld.
11. Delaying conviction inquiries until the conditional offer stage does not encroach upon the public safety needs of the employer. The policy does not change an employer's decision of *whether* a conviction history inquiry is made, but simply *when* an inquiry may be made.
12. If a criminal background inquiry is delayed until the conditional offer stage, the candidate can be assured that until that point, his or her merits, accomplishments, and skill set were considered fairly by the employer. If an applicant is then denied the position, both employer and applicant have clarity that the rationale for the denial is as a result of the background check, rather than the applicant's qualifications. This transparency benefits the employer by assuring the candidate, and any enforcement agency that is investigating a complaint, that the applicant was considered fully for the position.
13. The conditional offer threshold inquiry is aligned with the Equal Employment Opportunity Commission's recommendations. Limiting inquiries until a conditional offer of employment is also consistent with the Office of Personnel Management (OPM), which provides guidance for federal agency and federal contractor hiring. OPM recommends in its federal hiring best practices that criminal record inquiries should not be made until the conditional offer of employment stage because it is "more practical and cost-effective to first ensure that the applicant is eligible for the position."

NOW THEREFORE, the Council Directs:

- a. That it is in the public interest to remove barriers to employment by establishing required procedures for the use of criminal history information by employers within the City of Portland as described in Code Chapter 23.10 attached as Exhibit A;
- b. That Administrative Rules governing the implementation of this Code shall be drafted by the City Attorney and brought before Council for authorization, as described in Exhibit A; and
- c. That the City may contract with the Bureau of Labor and Industries (BOLI) for enforcement of City Code Chapter 23.10. The City Attorney is directed to negotiate an intergovernmental agreement with BOLI for enforcement of Chapter 23 and to bring the agreement to Council for authorization upon completion of the negotiations.
- d. That the City Attorney provide Council with a one year report on claims by individuals, or any actions brought by the BOLI Commissioner, State Attorney General or City Attorney, for both the State and City claims.

Passed by Council: NOV 25 2015

Mayor Charlie Hales

Prepared by: Judy S. Prosper

Date Prepared: November 10, 2015

**Mary Hull-Caballero**

Auditor of the City of Portland

By

*Gayla Jennings*

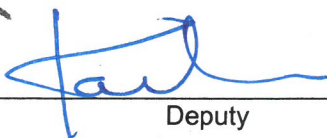
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1219

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Agenda No.  
**ORDINANCE**  
Title

187459 As Amended

Add Code Removing Barriers to Employment to establish procedures for the use of criminal history information by employers within the City (Ordinance; add Code Chapter 23.10)

<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Hales</b>	CLERK USE: DATE FILED <u>NOV 10 2015</u>
<b>COMMISSIONER APPROVAL</b> Mayor—Finance and Administration - Hales Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick	Mary Hull Caballero Auditor of the City of Portland  By:  Deputy
<b>BUREAU APPROVAL</b> Bureau: Mayor's Office	ACTION TAKEN: NOV 18 2015 PASSED TO SECOND READING As Amended NOV 25 2015 9:30 A.M.
Prepared by: Rachael Wiggins Date Prepared: 11/9/2015	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances <i>Toni</i>	
City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan <i>Angela</i>	
Council Meeting Date <b>November 18, 2015</b>	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input checked="" type="checkbox"/> <b>Start time: 2:45 pm</b>  <b>Total amount of time needed: 2 hour</b> (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input type="checkbox"/> <b>Total amount of time needed:</b> (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	4. Novick	✓	
Hales	Hales	✓	

## CHAPTER 23.10

## REMOVING BARRIERS TO EMPLOYMENT

**Sections:**

- 23.10.010 Purpose.
- 23.10.020 Definitions.
- 23.10.030 Use of Criminal History in Employment Decisions.
- 23.10.040 Exceptions.
- 23.10.050 Enforcement.
- 23.10.060 Administrative Rules Implementing this Chapter.
- 23.10.070 Confidentiality and Nondisclosure.
- 23.10.080 Public Education and Outreach.
- 23.10.090 Severability.
- 23.10.100 Application.

**23.10.010 Purpose.**

The purpose of this Chapter is to remove barriers to employment so that people with criminal histories can provide for themselves and their families; to reduce disparate impacts on people of color that result from the use of criminal history information in hiring and employment decisions; and to reduce recidivism through the reintroduction of formerly incarcerated persons into community life.

**23.10.020 Definitions.**

For purposes of this Chapter, the following definitions apply:

- A. "City" means the City of Portland as defined in Title 1 of the Code of the City of Portland.
- B. "Employer" means any person or entity who directly or through an agent employs another for a position being performed a majority of the time within the City of Portland, but does not include:
  - 1. The United States Government;
  - 2. The State of Oregon and any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;
  - 3. Any political subdivision of the State of Oregon or any county, city, district, authority, public corporation or public entity other than the City of Portland; or
  - 4. Employers with fewer than six employees.
- C. "Employ" means to engage or use the personal service of another person on

a full-time, part-time, temporary or seasonal basis, with or without pay, where the Employer reserves the right to control the means by which such service is performed.

**D.** “Conditional Offer of Employment” means any offer for a position that is conditioned solely on:

1. The results of an Employer’s inquiry into or gathering of information about a person’s arrest or conviction history; and/or
2. Some other contingency expressly communicated to the applicant at the time of the offer.

**23.10.030 Use of Criminal History in Employment Decisions.**

**A.** It is an unlawful practice for an Employer to exclude an applicant from consideration solely because of the applicant’s criminal history.

**B.** An Employer may consider an applicant’s criminal history in the hiring process only after making a Conditional Offer of Employment. An Employer violates this Chapter if an Employer accesses an applicant’s criminal history prior to making a Conditional Offer of Employment.

**C.** It is not an unlawful practice for an Employer to rescind a Conditional Offer of Employment based upon an applicant’s criminal history if an Employer determines in good faith that a specific offense or conduct is job related for the position in question and consistent with business necessity.

**D.** In making the determination of whether an applicant’s criminal history is job related for the position in question and consistent with business necessity, an Employer must conduct an individualized assessment of:

1. The nature and gravity of the criminal offense;
2. The time that has elapsed since the criminal offense took place; and
3. The nature of the Employment held or sought.

**E.** Nothing in this section prevents an employer from considering an applicant’s criminal history after making a conditional offer of employment, except that an employer shall not consider:

1. An arrest not leading to a conviction, except where a crime is unresolved or charges are pending against an applicant;
2. Convictions that have been judicially voided or expunged; or



3. Charges that have been resolved through the completion of a diversion or deferral of judgment program for offenses not involving physical harm or attempted physical harm to a person.

F. If, after consideration of an applicant's criminal history an employer rescinds the conditional offer of employment, the employer shall notify the applicant in writing of its decision and shall identify the relevant criminal convictions on which the decision is based.

**23.10.040 Exceptions.**

A. The prohibitions in this Chapter do not apply:

1. If federal, state or local law, including corresponding rules and regulations, requires the consideration of an applicant's criminal history;
2. To an employer that is a law enforcement agency;
3. To an employer in the criminal justice system; or
4. To an employer seeking a nonemployee volunteer.

B. For the following positions, an Employer may consider an applicant's criminal history at any point in the hiring process, and may use the City Criminal History Matrix provided by administrative rule to screen applicants, but must nonetheless comply with all other requirements of this Chapter. An individualized assessment shall be required for any criminal convictions not contained on the City Criminal History Matrix.

1. Positions involving direct access to or the provision of services to children, the elderly, persons with disabilities, persons with a mental illness, or individuals with alcohol or drug dependence or substance abuse disorders;
2. Positions which have been determined by administrative rule to present heightened public safety concerns or a business necessity;
3. Positions designated by the Employer as part of a federal, state or local government program designed to encourage the employment of those with criminal histories.

**23.10.050 Administrative Rules Implementing this Chapter.**

- A. The City Attorney shall draft rules, procedures and forms to assist in the implementation of the provisions of this Chapter and bring these rules, procures and forms before Council for authorization.
- B. All rules adopted to implement this Chapter shall be subject to a public review process.
- C. Not less than ten or more than thirty days before such public review process, a notice shall be published in a newspaper of general circulation and sent to stakeholders who have requested notice. The notice shall include the place and time, when the rules will be considered and the location at which copies of the full text of the proposed rules may be obtained.
- D. The duration of public review process shall be a minimum of 21 calendar days from the date of notification for written comment.
- E. During the public review process a designee of the City shall hear testimony or receive written comment concerning the proposed rules.
- F. The City shall review and consider the comments received during the public review process, and shall either adopt, modify, or reject the proposed rules.
- G. All initial rules shall be effective July, 1, 2016, and all subsequent rules shall be effective 30 days after adoption by the City Attorney and shall be filed in the Office of the City Auditor.
- H. Notice of changes in Administrative Rules shall be published in a newspaper of general circulation, sent to stakeholders who have requested notice and posted on the BOLI and City web sites.

**23.10.060 Enforcement.**

- A. The City may contract with BOLI to enforce this Chapter.
- B. Pursuant to agreement between BOLI and the City, enforcement may be governed by the procedures established pursuant to ORS 659A.820 through 659A.865, or such other procedures as may be agreed upon by BOLI and the City. Rules adopted by the City pursuant to Section 23.10.050 of this Chapter may also be used to implement enforcement and administration of this Chapter.
- C. Pursuant to agreement between BOLI and the City, any person claiming to be aggrieved by an unlawful employment practice under this Chapter, the State Attorney General or the City Attorney may file a complaint with BOLI under procedures established under ORS 659A.820 through 659A.865, or such other



procedures as BOLI or the City may establish for taking complaints which shall include options for resolution of complaints through such means as mediation.

**D.** Pursuant to agreement, BOLI shall have the same enforcement powers with respect to the rights established under this Chapter as are established under ORS 659A.820 through 659A.865, and if the complaint is found to be justified, the complainant may be entitled to any remedies provided under ORS 659A.820 through 659A.865, and their implementing regulations and any additional remedies, provided that those remedies are specified in the agreement between the City and the BOLI Commissioner.

**23.10.070 Confidentiality and Nondisclosure.**

Any criminal history information obtained by an Employer shall remain confidential except where disclosure is required by law.

**23.10.080 Public Education and Outreach.**

The City shall develop and implement an outreach program to inform Employers and members of the public about the terms of this Chapter.

**23.10.090 Severability.**

If a provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect the other provisions or application of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

**23.10.100 Application.**

This Chapter is effective immediately for drafting of the administrative rules under Section 23.10.050, contracting with BOLI under Section 23.10.060 A and public education and outreach under Section 23.10.080. Enforcement of this Chapter under Section 23.10.060 B, C & D shall commence July 1, 2016.