

ORDINANCE NO. 14-13 N. S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF RICHMOND ADDING CHAPTER 2.65 TO THE MUNICIPAL CODE OF THE CITY OF RICHMOND ENTITLED “BAN THE BOX” REQUIRING ANY CONTRACTOR, LESSEE, RECIPIENT OF FINANCIAL AID OR THEIR SUBCONTRACTORS TO REFRAIN FROM ANY INQUIRIES REGARDING EMPLOYMENT APPLICANTS' PRIOR CRIMINAL CONVICTIONS.

The Council of the City of Richmond, California do ordain as follows:

Section I. Amendment

Article II of the Municipal Code of the City of Richmond is hereby amended by adding a Chapter 2.65 which reads as follows:

Chapter 2.56

BANNING THE REQUIREMENT TO PROVIDE INFORMATION OF PRIOR CRIMINAL CONVICTIONS ON ALL EMPLOYMENT APPLICATIONS

Sections:

- 2.65.010 Purpose
- 2.65.020 Findings
- 2.65.030 Definition
- 2.65.040 Prohibition on Requiring an Applicant for Employment to Provide Information on Their Prior Criminal Convictions
- 2.65.050 Exemptions
- 2.65.060 Compliance
- 2.65.070 Severability
- 2.65.080 Effective Date

2.65.010 Purpose

The purpose of this ordinance is to require that all contractors, lessees, recipients of City financial aid, and their respective subcontractors that employ the equivalent of ten or more full-time employees in their total workforce and who desire to obtain contracts with the City of Richmond, remove any question regarding prior criminal convictions from their printed and/or on-line employment application forms and do not make any inquiry into an applicant’s conviction history. Nothing provided for herein, prohibits an employer who is required by either state or federal law to perform background checks as part of the hiring process, to take the necessary actions to comply with applicable law.

2.65.020 Findings

The City Council of Richmond finds as follows:

- (a) The City of Richmond is committed to ensuring that all qualified individuals seeking employment within the City should be given an equal opportunity to apply for available positions; and
- (b) The City of Richmond believes that providing an equal opportunity includes extending employment opportunities to qualified individuals who have been released from incarceration and are rebuilding their lives; and
- (c) The U.S. Equal Employment Opportunity Commission has stated that “excluding individuals from employment on the basis of their conviction records has an adverse impact on Blacks and Hispanics in light of statistics showing that they are convicted at a rate disproportionately greater than their representation in the population” and that “such a policy or practice is unlawful under Title VII in the absence of a justifying business necessity”; and
- (d) Hiring practices that consider the past criminal history of applicants without a justifying business necessity can prevent willing and qualified job applicants from obtaining gainful employment; and

(e) The inability to obtain gainful employment after release from incarceration can contribute to a host of problems including high rates of unemployment, increased recidivism rates, and increased crime; and

(f) The community at large benefits when recidivism rates are reduced and gainful employment is critical for individuals to avoid re-offending, and

(g) There has been a nationwide initiative, referred to as "Ban the Box", in which employers are encouraged to remove questions regarding prior criminal convictions from employment applications; and

(h) Various cities and counties throughout the United States, including Compton, California; Hartford and New Haven, Connecticut; Boston, Cambridge, and Worcester, Massachusetts; Detroit, Michigan; Atlantic City and Newark, New Jersey; Buffalo and New York City, New York; Philadelphia, Pennsylvania; and Seattle, Washington and the states of Hawaii, Massachusetts, Minnesota, and Rhode Island have all adopted employment application practices aligned with the "Ban the Box" initiative that are applicable to government contractors or all private employers;

(i) As one of the larger purchasers of goods and services and providers of financial aid in Richmond, the City's contracting practices can influence the hiring practices utilized by other employers, and

(j) The City of Richmond has an opportunity to lead the way toward greater economic opportunity for individuals by providing equal opportunities for employment to members of the community, including those members who were formerly incarcerated and are attempting to rebuild their lives; and

(k) The City of Richmond recognizes that State and/or federal laws may require criminal background investigations for certain positions, including positions that involve work with children, positions in law enforcement, and other sensitive positions; and

(l) The City of Richmond recognizes that its contractors, lessee's and recipients of financial aid will have to continue to comply with State and/or federal laws in conducting required and necessary background investigations, while also balancing the interest in providing opportunities for employment to those who have prior convictions in positions in which there are no statutory prohibitions against employment.

2.65.030 Definitions

The following words and phrases whenever used in this Chapter shall be construed as defined in this section:

(a) "City" means the City of Richmond and all City agencies, departments and offices, including the Richmond Successor Agency to the Richmond Redevelopment Agency, the Richmond Housing Authority and the Port of Richmond.

(b) "Contractor" means any person or entity that employs the equivalent of ten or more full-time employees in their total workforce that enters into a contract, service contract, or a franchise agreement with the City,

(c) "Employer" means any person who is a City financial assistance recipient, lessee, or a contractor or subcontractor and who employs the equivalent of ten or more full-time employees in their total workforce.

(d) "Employee" means all persons engaged in the operation or conduct of any business, whether as owner, any member of owner's family, partner, associate, agent, manager, or solicitor, and any and all other persons engaged or employed in said business.

(e) "Leaseholder" means any person that enters into an agreement with the City for any lease of public property, license, concession or franchise and which employs the equivalent of ten or more full-time employees in their workforce.

(f) "Non-profit" shall mean a non-profit organization described in Section 501(c) (3) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c) (3) of that code, or any non-profit educational organization qualified under Section 233701(d) of the Revenue and Taxation Code, subcontractor and who employs the equivalent of ten or more full-time employees in their total workforce.

(g) "Person" means any individual, proprietorship, partnership, joint venture, corporation, Limited Liability Company, trust, association or other entity that may employ individuals or enter into contracts.

(h) "Sensitive Position" means that the Richmond Police Department has made the determination that a job position is of such sensitivity that an exemption is warranted per Section 2.65.050. The City Manager, or designee is hereby delegated the power and authority to develop the list of "Sensitive Positions", which shall be submitted to the City Council to be adopted by Resolution.

(i) "Service Contract" means:

(1) A contract let to a contractor by the City for the furnishing of services, to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities; or

(2) A lease or license under which service contracts are let by the lessee or licensee. A contract for the purchase or lease of goods, products, equipment, supplies or other property is a "service contract," unless it is not subject to a formal bidding process with the City.

(j) "Subcontractor" means any person who enters into a contract with:

(1) A contractor to assist the contractor in performing a service contract; or

(2) A City financial aid recipient designated to assist the recipient in performing the work for which the assistance is being given or to perform services on the property which is the subject of City financial assistance. Service contractors of City financial aid recipients shall not be regarded as subcontractors except to the extent provided by the definition of "employee" in this section.

(k) "Substantially Job-Related Conviction" means that the conviction record is substantially related to the duties and qualifications of the position. The Employer will consider whether the position offers the opportunity for a similar offense to occur and whether circumstances leading to the offense will recur to determine whether the conviction record is substantially job-related. If the Employer believes that an applicant has a Substantially Job-Related Conviction to a Sensitive Position as defined in (h) of this Section, the Employer will submit to the City Manager or designee the information about the relevant conviction record and the duties and qualifications of the Sensitive Position. The City Manager or designee, based on this information and the definition provided herein of Substantially Job-Related Conviction, will make the final determination of whether the conviction record may be the basis for an adverse hiring decision.

2.65.040 Prohibition on Requiring an Applicant for Employment to Provide Information on Their Prior Criminal Convictions

(a) All contractors, lessees, recipients of City financial aid, and their respective subcontractors that employ the equivalent of ten or more full-time employees in their total workforce and who desire to obtain contracts with the City of Richmond, are subject to the following requirements as a condition precedent to the award of any contract or lease with the City as per Section 2.65.060:

(1) Remove any question regarding prior criminal convictions from printed and/or on-line employment application forms; and

(2) Do not make any inquiry into an applicant's conviction history.

(3) If a criminal background investigation is required by State and/or Federal law for a position or the position is Sensitive as defined in Section 2.65.030 (h), the background screening will be conducted after the Employer has determined that the applicant is otherwise qualified, and the Employer has made a conditional offer of employment. The Employer's consideration of a conviction record will be limited to a

Substantially Job-Related Conviction and must involve an Employer's individualized assessment including time elapsed since the offense and any evidence of rehabilitation or other mitigating circumstances. If the Employer makes an adverse hiring decision because of a Substantially Job-Related Conviction, the applicant must be provided with a written notice of rejection including how the conviction may be related to the job, and given the opportunity to correct any inaccuracies in the conviction record information and to offer any other evidence of rehabilitation or other mitigating circumstances.

2.65.050 Exemptions

If a criminal background investigation is required by State and/or Federal law for a position or the position is Sensitive as defined in Section 2.65.030 (h), then Section 2.65.040 (a)(2) does not apply.

2.60.060 Compliance

(a) Compliance with this Ordinance is a condition precedent to the award of any contract or lease. All contractors, lessees, recipients of City financial aid, and their respective subcontractors with ten or more full-time employees in their total workforce seeking to obtain contracts with the City of Richmond will provide to the City a copy of their employment application as part of the formal bidding process. Violation of this Ordinance shall be subject to contract or lease termination.

(b) The City Manager or designee shall conduct periodic, random reviews to assess compliance with this Ordinance.

(c) The City Manager or designee shall determine whether an employer subject to this Ordinance has complied with the requirements of this Chapter. If the City Manager determines that the employer failed to comply with the provisions of this Chapter, the employer has the burden of proving compliance with this Chapter and its obligations under this Chapter. Each employer agrees to pay the civil penalties set forth in subsection (f) of this section if they are found in noncompliance.

(d) The City Manager or designee has the power, in addition to any other remedy the City may have under this Chapter or by operation of law, to suspend or terminate the pertinent contract in whole or in part, with continuance thereof conditioned upon a satisfactory showing to the City Manager of the employer's ability to comply.

(e) In the event the City Manager or designee believes the employer may not be in compliance with the requirements of this Chapter, the following procedure will be followed:

(1) The City Manager or designee shall cause to be delivered to the employer a written "Notice of Noncompliance." This notice shall specify the matters which constitute the noncompliance; the specific action required to correct the noncompliance; and the time period during which such correction shall occur. In no event shall this time period be more than thirty (30) days after receipt of the notice by the employer. If the notice is mailed, it will be deemed received five (5) days after the date of mailing;

(2) If the employer disagrees with the notice, they shall have the burden of proving compliance with the provisions of the Ordinance and shall submit any evidence and argument to the City Manager or designee to establish compliance no more than thirty (30) days after receipt of the notice by the employer;

(3) In the event the City Manager or designee subsequently agrees that compliance has occurred, the City Manager or designee shall cause to be delivered promptly to the employer a written "Notice of Correction of Noncompliance," specifying the original noncompliance which has been corrected;

(4) In the event the City Manager or designee does not agree that compliance has occurred, the City Manager or designee shall promptly notify the employer by a written "Notice of Failure to Correct Noncompliance," describing the facts constituting the noncompliance;

(5) After the issuance of a written "Notice of Failure to Correct Noncompliance," the employer shall have the right to request a hearing before the City Manager, designee, or a mutually agreed upon arbitrator who shall make the final determination. The request for a hearing must be made within ten (10) working days after receipt of the "Notice of Failure to Correct Noncompliance." If the notice is mailed, it will be deemed received five (5) days after the date of mailing. The hearing shall be held no sooner than twenty (20) and no later than thirty (30) days after receipt by the City of the request for hearing, unless otherwise agreed to by the parties. At the hearing, the employer will be allowed to present any evidence and argument it believes proves compliance. The City Manager, designee, or neutral arbitrator shall issue their final determination no later than ten (10) business days after the hearing. The employer must exhaust this administrative remedy prior to commencing further legal action;

(6) In the event no request for hearing is timely made, the determination of failure to correct noncompliance shall be deemed to be final;

(7) Should the employer fail to comply with the "Notice of Noncompliance" as specified above, and a final determination of noncompliance is made, the City may exercise any of its powers as specified in this section.

(f) Civil Penalties. The City may assess civil penalties for violations of this Chapter. Civil penalties for violations of this Chapter are as follows: An amount not to exceed \$1,000.00 or 1% of the total contract amount, whichever is greater, for each instance of noncompliance, regardless of the number of separate acts of noncompliance by the employer.

(g) The City shall keep a record of all violations of the application provisions established by this Chapter. A history of violation of the Ordinance's provisions shall be a factor which is considered by the City when deciding upon any future awards of contracts to the affected employer and may form the basis for denying any future contracts to the affected employer.

(h) The City Manager shall make a report on all such complaints, investigations and reviews to the City Council on a quarterly basis.

2.65.070 Severability

If any section, subsection, paragraph, sentence or word of this Ordinance is for any reason held to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, paragraph, sentence or word of this Ordinance irrespective of the invalidity of any other section, subsection, paragraph, sentence or word.

2.65.080 Effective Date

This Ordinance shall become effective 30 days after its final adoption and passage.

First read at a regular meeting of the Council of the City of Richmond held July 2, 2013, and finally passed and adopted at a special meeting thereof held July 30, 2013, by the following vote:

AYES: Councilmembers Bates, Beckles, Myrick, Rogers, Vice Mayor Boozé, and Mayor McLaughlin.

NOES: Councilmember Butt.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 14-13 N.S.** finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 30, 2013.