

1 [Police, Administrative Codes - Considering Criminal History in Employment and Housing
2 Decisions]

3 **Ordinance amending the Police Code to prohibit employers and housing providers**
4 **from inquiring about, requiring disclosure of, or basing housing and employment**
5 **decisions on convictions for decriminalized behavior, including the non-commercial**
6 **use and cultivation of cannabis; reduce from 20 to 5 the number of employees required**
7 **for an employer to be covered by the Fair Chance Ordinance (Article 49); prohibit**
8 **employers and housing providers from inquiring about, requiring disclosure of, or**
9 **basing housing and employment decisions on a person's conviction history until after**
10 **a conditional offer of employment; authorize the City to impose penalties for the first**
11 **violation of that Ordinance, increase the penalties for subsequent violations, and**
12 **authorize the payment of penalties to the victims of those violations; create a private**
13 **right of action for the victims; and amend the Administrative Code to, among other**
14 **things, as defined herein, require City contractors and subcontractors to adhere to the**
15 **above requirements when making decisions regarding employment of persons for**
16 **work on City contracts and subcontracts.**

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18 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
19 **Additions to Codes** are in *single-underline italics Times New Roman font*.
20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
21 **Board amendment additions** are in double-underlined Arial font.
22 **Board amendment deletions** are in ~~strikethrough Arial font~~.
23 **Asterisks (* * * *)** indicate the omission of unchanged Code
24 subsections or parts of tables.
25

23 Be it ordained by the People of the City and County of San Francisco:

1 Section 1. The Police Code is hereby amended by revising Sections 4903, 4904,
2 4906, 4909, and 4911 of Article 49, to read as follows:

3
4 **SEC. 4903. DEFINITIONS.**

5 For the purposes of this Article 49, the following words and phrases shall mean and
6 include:

7 * * * *

8
9 "Employer" shall mean any individual, firm, corporation, partnership, labor organization,
10 group of persons, association, or other organization however organized, that is located or
11 doing business in the City, and that employs 20five or more persons regardless of location,
12 including the owner or owners and management and supervisory employees. "Employer"
13 includes job placement and referral agencies and other employment agencies. "Employer"
14 does not include the City and County of San Francisco, any other local governmental unit, or
15 any unit of the state government or the federal government.

16 "Employment" shall mean any occupation, vocation, job, or work, including but not
17 limited to temporary or seasonal work, part-time work, contracted work, contingent work, work
18 on commission, and work through the services of a temporary or other employment agency,
19 or any form of vocational or educational training with or without pay. The physical location of
20 the employment or prospective employment of an individual as to whom Section 4904 applies
21 must be at least eight (~~8~~) hours per week within the City.

22 * * * *

23
24 **SEC. 4904. PROCEDURES FOR USE OF CRIMINAL HISTORY INFORMATION IN**
25 **EMPLOYMENT DECISIONS.**

1 (a) Regarding applicants or potential applicants for employment, or employees, an
2 Employer shall not, at any time or by any means, inquire about, require disclosure of, or if
3 such information is received base an Adverse Action in whole or in part on:

4 (1) An Arrest not leading to a Conviction, excepting under circumstances
5 identified in this Section an Unresolved Arrest;

6 (2) Participation in or completion of a diversion or a deferral of judgment
7 program;

8 (3) A Conviction that has been judicially dismissed, expunged, voided,
9 invalidated, or otherwise rendered inoperative, by way of example but not limitation, under
10 California Penal Code ~~s~~Sections 1203.4, 1203.4a, or 1203.41;

11 (4) A Conviction or any other determination or adjudication in the juvenile
12 justice system, or information regarding a matter considered in or processed through the
13 juvenile justice system;

14 (5) A Conviction that is more than seven years old, the date of Conviction being
15 the date of sentencing, except that this restriction and any limitations imposed in this Article 49
16 based on the limitation in this subsection (a)(5) shall not apply where the applicant or
17 employee is or will be (A) providing services to or have supervisory or disciplinary authority
18 over a minor, (B) providing services to or have supervisory or disciplinary authority over a
19 "dependent adult," as that phrase is defined in California Welfare and Institutions Code
20 Section 15610.23 or any successor state law, or (C) providing support services or care to or
21 has supervisory authority over a person 65 years or older; ~~or~~

22 (6) Information pertaining to an offense other than a felony or misdemeanor,
23 such as an infraction, except that an Employer may inquire about, require disclosure of, base
24 an Adverse Action on, or otherwise consider an infraction or infractions contained in an
25

1 applicant or employee's driving record if driving is more than a de minimis element of the
2 employment in question, or

3 (7) A Conviction that arises out of conduct that has been decriminalized since the date
4 of the Conviction, the date of the Conviction being the date of sentencing. Examples of statutes that
5 have decriminalized particular conduct include but are not limited to California Health and Safety
6 Code Sections 11362.1 and 11362.2.

7 Accordingly, the matters identified in this subsection (a) may not be considered in any
8 manner by the Employer.

9 (b) The Employer shall not require applicants or potential applicants for employment
10 or employees to disclose on any employment application the fact or details of any Conviction
11 History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(67). Nor shall
12 the Employer inquire on any employment application about the fact or details of any
13 Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(67).
14 An Employer may ask on an employment application for an applicant, potential applicant, or
15 employee's written consent for a Background Check so long as the application includes a
16 clear and conspicuous statement that the Employer will not itself conduct or obtain from a
17 third party the Background Check until ~~either after the first live interview with the person or~~
18 ~~after a conditional offer of employment in accordance with subsection (c) of this Section 4904.~~

19 (c) The Employer shall not require applicants or potential applicants for employment,
20 or employees, to disclose, and shall not inquire into or discuss, their Conviction History or an
21 Unresolved Arrest until ~~either after the first live interview with the person (via telephone,~~
22 ~~videoconferencing, use of other technology, or in person) or, at the Employer's discretion,~~
23 ~~after a conditional offer of employment. The Employer may not itself conduct or obtain from a~~
24 ~~third party a Background Check until either after the first live interview with the person or after~~
25 ~~a conditional offer of employment.~~

1 * * * *

2
3 **SEC. 4906. PROCEDURES FOR USE OF CRIMINAL HISTORY INFORMATION IN**
4 **HOUSING DECISIONS.**

5 (a) Regarding applicants or potential applicants for Affordable Housing, and their
6 household members, a Housing Provider shall not, at any time or by any means, inquire
7 about, require disclosure of, or if such information is received base an Adverse Action in
8 whole or in part on:

9 (1) An Arrest not leading to a Conviction, excepting under circumstances
10 identified in this Section an Unresolved Arrest;

11 (2) Participation in or completion of a diversion or a deferral of judgment
12 program;

13 (3) A Conviction that has been judicially dismissed, expunged, voided,
14 invalidated, or otherwise rendered inoperative, by way of example but not limitation, under
15 California Penal Code sSections 1203.4, 1203.4a, or 1203.41;

16 (4) A Conviction or any other determination or adjudication in the juvenile
17 justice system, or information regarding a matter considered in or processed through the
18 juvenile justice system;

19 (5) A Conviction that is more than seven years old, the date of Conviction being
20 the date of sentencing; ~~or~~

21 (6) Information pertaining to an offense other than a felony or misdemeanor,
22 such as an infraction; *or*

23 (7) A Conviction that arises out of conduct that has been decriminalized since the date
24 of the Conviction, the date of the Conviction being the date of sentencing. Examples of statutes that

1 have decriminalized particular conduct include but are not limited to California Health and Safety
2 Code Sections 11362.1 and 11362.2.

3 Accordingly, the matters identified in this subsection (a) may not be considered in any
4 manner by the Housing Provider.

5 (b) The Housing Provider shall not require applicants for Affordable Housing to
6 disclose on any housing application the fact or details of any Conviction History, any
7 Unresolved Arrest, or any matter identified in subsections (a)(1)-(6Z). Nor shall the Housing
8 Provider inquire on any housing application about the fact or details of any Conviction History,
9 any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6Z)).

10 * * * *

11
12 **SEC. 4909. IMPLEMENTATION AND ENFORCEMENT OF EMPLOYMENT**
13 **PROVISIONS.**

14 (a) Administrative Enforcement.

15 (1) With regard to the employment provisions of this Article 49, the OLSE is
16 authorized to take appropriate steps to enforce this Article and coordinate enforcement,
17 including the investigation of any possible violations of this Article. Where the OLSE has
18 reason to believe that a violation has occurred, it may order any appropriate temporary or
19 interim relief to mitigate the violation or maintain the status quo pending completion of a full
20 investigation or hearing. The OLSE shall not find a violation based on an Employer's decision
21 that an applicant or employee's Conviction History is Directly Related, but otherwise may find
22 a violation of this Article, including if the Employer failed to conduct the individualized
23 assessment as required under Section 4904(f).

24 (2) Where the OLSE determines that a violation has occurred, it may issue a
25 determination and order any appropriate relief, provided however, that for a first violation, or

1 for any violation during the first twelve months following the operative date of this Article, the
2 OLSE must issue warnings and notices to correct, and offer the Employer technical
3 assistance on how to comply with the requirements of this Article. For a second violation, the
4 OLSE may impose an administrative penalty of no more than \$50.00 that the Employer must
5 pay to the City for each employee or applicant as to whom the violation occurred or continued.
6 Thereafter, for subsequent violations, the penalty may increase to no more than \$100,
7 payable to the City for each employee or applicant whose rights were, or continue to be,
8 violated. Such funds shall be allocated to the OLSE and used to offset the costs of
9 implementing and enforcing this Article.

10 (3) If multiple employees or applicants are impacted by the same procedural
11 violation at the same time (e.g. all applicants for a certain job opening are asked for their
12 Conviction History on the initial application), the violation shall be treated as a single violation
13 rather than multiple violations.

14 (4) Where prompt compliance is not forthcoming, the OLSE may refer the
15 action to the City Attorney to consider initiating a civil action pursuant to Subsection (b).

16 (5) Subsections (a)(2), (a)(3), and (a)(4) apply to violations occurring prior to the
17 effective date of the ordinance in Board of Supervisors File No. 171170 amending this Section 4909.
18 Subsections (a)(6) and (a)(7) apply to violations occurring on or after the effective date of that
19 ordinance.

20 (6) Where the OLSE determines that a violation has occurred, it may issue a
21 determination and order any appropriate relief. If multiple employees or applicants are impacted by
22 the same procedural violation at the same time (e.g., all applicants for a certain job opening are asked
23 for their Conviction History on the initial application), the violation shall be treated as one violation
24 for each impacted employee or applicant.

1 (7) For a first violation on or after the effective date of the ordinance in Board of
2 Supervisors File No. 171170 amending this Section 4909, the OLSE may impose an administrative
3 penalty of no more than \$500 for each employee or applicant as to whom the violation occurred or
4 continued. For a second violation on or after the effective date of that ordinance, the OLSE may
5 impose an administrative penalty of no more than \$1,000 for each employee or applicant as to whom
6 the violation occurred or continued. Thereafter, for subsequent violations on or after the effective date
7 of that ordinance, the OLSE may impose an administrative penalty of no more than \$2,000 for each
8 employee or applicant whose rights were, or continue to be, violated. The administrative penalties for
9 each violation on or after the effective date of that ordinance shall be paid to the employee or applicant
10 as to whom the violation occurred or continued. Notwithstanding the previous sentences in this
11 subsection (a)(7), if multiple employees or applicants are impacted by the same procedural violation at
12 the same time (e.g., all applicants for a certain job opening are asked for their Conviction History on
13 the initial application), the Employer shall be assessed the same administrative penalty for each of the
14 employees or applicants affected by that procedural violation.

15 (58) An employee, applicant or other person may report to the OLSE any
16 suspected violation of this Article 49 within 60 days of the date the suspected violation
17 occurred. The OLSE shall encourage reporting pursuant to this subsection by keeping
18 confidential, to the maximum extent permitted by applicable laws, the name and other
19 identifying information of the employee, applicant or person reporting the violation; provided,
20 however, that with the authorization of such person, the OLSE may disclose his or her name
21 and identifying information as necessary to enforce this Article or for other appropriate
22 purposes.

23 (69) The Director of the OLSE shall establish rules governing the administrative
24 process for determining and appealing violations of this Article 49. The Rules shall include
25 procedures for:

1 (A) providing the Employer with notice that it may have violated this
2 Article;

3 (B) providing the Employer with a right to respond to the notice;

4 (C) providing the Employer with notice of the OLSE's determination of a
5 violation;

6 (D) providing the Employer with an opportunity to appeal the OLSE's
7 determination to a hearing officer, who is appointed by the City Controller or his or her
8 designee.

9 (~~710~~) If there is no appeal of the OLSE's determination of a violation, that
10 determination shall constitute a failure to exhaust administrative remedies, which shall serve
11 as a complete defense to any petition or claim brought by the Employer against the City
12 regarding the OLSE's determination of a violation.

13 (~~811~~) If there is an appeal of the OLSE's determination of a violation, the
14 hearing before the hearing officer shall be conducted in a manner that satisfies the
15 requirements of due process. In any such hearing, the OLSE's determination of a violation
16 shall be considered prima facie evidence of a violation, and the Employer shall have the
17 burden of proving, by a preponderance of the evidence, that the OLSE's determination of a
18 violation is incorrect. The hearing officer's decision of the appeal shall constitute the City's
19 final decision. The sole means of review of the City's final decision, rendered by the hearing
20 officer, shall be by filing in the San Francisco Superior Court a petition for writ of mandate
21 under Section 1094.5 of the California Code of Civil Procedure. The OLSE shall notify the
22 Employer of this right of review after issuance of the City's final decision by the hearing officer.

23 (b) Civil Enforcement. The City or any employee or applicant whose rights under this
24 Article 49 have been violated may bring a civil action in a court of competent jurisdiction against
25 the Employer or other person violating this Article, and, upon prevailing, shall be entitled to

1 such legal or equitable relief as may be appropriate to remedy the violation including, but not
2 limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the
3 payment of an additional sum as liquidated damages in the amount of \$500-00 to each
4 employee, applicant or other person whose rights under this Article were violated for each day
5 such violation continued or was permitted to continue; appropriate injunctive relief; and,
6 further shall be awarded reasonable attorney's fees and costs. An employee or applicant may
7 institute a civil action under this subsection (b) only if:

8 (1) The employee or applicant has filed a complaint with the Director of the
9 OLSE;

10 (2) 90 days have passed since the filing of the complaint;

11 (3) After such 90-day period has passed, the employee or applicant provides 30-
12 day written notice to the Director of the OLSE and the City Attorney's Office of his or her intent to
13 initiate civil proceedings; and

14 (4) The City Attorney's Office has not provided notice to the employee or
15 applicant of the City's intent to initiate civil proceedings by the end of the 30-day period.

16 * * * *

17 (f) Tracking of Complaints. OLSE shall maintain a record of the number and types of
18 complaints it receives alleging violations of this Article, and the resolution of those complaints.
19 ~~This information shall be compiled on an annual calendar year basis and reported to the~~
20 ~~Board of Supervisors by January 31 of each year.~~ OLSE shall report this information to the
21 Board of Supervisors within six months of the operative date of the ordinance in Board of
22 Supervisors File No. 171106 and then annually thereafter.

23 * * * *

1 **SEC. 4911. IMPLEMENTATION AND ENFORCEMENT OF HOUSING PROVISIONS.**

2 (a) Administrative Enforcement.

3 (1) With regard to the housing provisions of this Article 49, the HRC, in
4 consultation with the Mayor's Office of Housing and Community Development, is authorized to
5 take appropriate steps to enforce this Article and coordinate enforcement, including the
6 investigation of any possible violations of this Article 49. The HRC shall not find a violation
7 based on a Housing Provider's decision that an applicant's Conviction History is Directly
8 Related, but otherwise may find a violation of this Article, including if the Housing Provider
9 failed to conduct the individualized assessment as required under Section 4906(f).

10 (2) Where the Director of HRC determines that a violation has occurred, he or
11 she may issue a determination and order any appropriate relief; provided, however, that for a
12 first violation, or for any violation during the first twelve months following the operative date of
13 this Article 49, the Director must issue warnings and notices to correct, and offer the Housing
14 Provider technical assistance on how to comply with the requirements of this Article 49. For a
15 second violation, the Director may impose an administrative penalty of no more than \$50.00
16 that the Housing Provider must pay for each applicant as to whom the violation occurred or
17 continued. Thereafter, for subsequent violations, the penalty may increase to no more than
18 \$100, payable to the City for each applicant whose rights were, or continue to be, violated.
19 Such funds shall be allocated to the HRC and used to offset the costs of implementing and
20 enforcing this Article.

21 (3) If multiple applicants are impacted by the same procedural violation at the
22 same time (e.g. all applicants for a certain housing unit are asked for their Conviction History
23 on the initial application), the violation shall be treated as a single violation rather than multiple
24 violations.

1 (4) Subsections (a)(2) and (a)(3) apply to violations occurring prior to the effective date
2 of the ordinance in Board of Supervisors File No. 171170 amending this Section 4911. Subsections
3 (a)(5) and (a)(6) apply to violations occurring on or after the effective date of that ordinance.

4 (5) Where the Director of HRC determines that a violation has occurred, he or she may
5 issue a determination and order any appropriate relief. If multiple applicants are impacted by the
6 same procedural violation at the same time (e.g., all applicants for a certain housing unit are asked for
7 their Conviction History on the initial application), the violation shall be treated as one violation for
8 each impacted applicant.

9 (6) For a first violation on or after the effective date of the ordinance in Board of
10 Supervisors File No. 171170 amending this Section 4909, the Director of HRC may impose an
11 administrative penalty of no more than \$500 for each applicant as to whom the violation occurred or
12 continued. For a second violation on or after the effective date of that ordinance, the Director of HRC
13 may impose an administrative penalty of no more than \$1,000 for each applicant as to whom the
14 violation occurred or continued. Thereafter, for subsequent violations on or after the effective date of
15 that ordinance, the Director of HRC may impose an administrative penalty of no more than \$2,000 for
16 each applicant whose rights were, or continue to be, violated. The administrative penalties for each
17 violation on or after the effective date of that ordinance shall be paid to the applicant as to whom the
18 violation occurred or continued. Notwithstanding the previous sentences in this subsection (a)(6), if
19 multiple applicants are impacted by the same procedural violation at the same time (e.g., all applicants
20 for a certain housing unit are asked for their Conviction History on the initial application), the Housing
21 Provider shall be assessed the same administrative penalty for each of the applicants affected by that
22 procedural violation.

23 (47) An applicant or other person may report to the HRC any suspected
24 violation of this Article 49 within 60 days of the date the suspected violation occurred. The
25 HRC shall encourage reporting pursuant to this subsection by keeping confidential, to the

1 maximum extent permitted by applicable laws, the name and other identifying information of
2 the employee, applicant or person reporting the violation; provided, however, that with the
3 authorization of such person, the HRC may disclose his or her name and identifying
4 information as necessary to enforce this Article 49 or for other appropriate purposes.

5 (~~58~~) The Director of the HRC, in consultation with the Mayor's Office of Housing
6 and Community Development, shall establish rules governing the administrative process for
7 determining and appealing violations of this Article 49. The Rules shall include procedures for:

8 (A) providing the Housing Provider with notice that it may have violated
9 this Article 49;

10 (B) providing the Housing Provider with a right to respond to the notice;

11 (C) providing the Housing Provider with notice of the Director's
12 determination of a violation;

13 (D) providing the Housing Provider with an opportunity to appeal the
14 Director's determination to the HRC.

15 (~~69~~) If there is no appeal of the Director's determination of a violation, that
16 determination shall constitute a failure to exhaust administrative remedies, which shall serve
17 as a complete defense to any petition or claim brought by the Housing Provider against the
18 City regarding the Director's determination of a violation.

19 (~~710~~) If there is an appeal of the Director's determination of a violation, the City
20 Controller or his or her designee shall appoint a person, other than a member of the
21 Commission, to serve as a hearing officer. The hearing before the hearing officer shall be
22 conducted in a manner that satisfies the requirements of due process. In any such hearing,
23 the Director's determination of a violation shall be considered prima facie evidence of a
24 violation, and the Housing Provider shall have the burden of proving, by a preponderance of
25 the evidence, that the Director's determination of a violation is incorrect.

1 (~~§11~~) If the hearing officer finds that the Housing Provider has engaged in
2 conduct in violation of this Article 49, the hearing officer shall issue an order requiring the
3 Housing Provider to cease and desist from the practice and to offer the housing
4 accommodation to the applicant or applicants under the terms for which the unit was offered
5 to the public. The Housing Provider shall not be required to offer the housing accommodation
6 if the unit has already been rented or leased to a tenant, but the Housing Provider shall be
7 required to offer a comparable unit, if available, to the applicant or applicants.

8 (~~912~~) The decision of the hearing officer shall be final unless the Commission
9 vacates his or her decision on appeal.

10 (~~1013~~) Either party may file an appeal of the hearing officer's decision with the
11 Commission. Such an appeal to the Commission from the determination of the hearing officer
12 must be made within 15 days of the mailing of the decision and findings of fact. The appeal
13 shall be in writing and must state the grounds for appellant's claim that there was either error
14 or abuse of discretion on the part of the hearing officer. Each appeal shall be accompanied by
15 a \$15 filing fee; provided, however, the fee shall be waived for an individual who files an
16 affidavit under penalty of perjury stating that he or she is an indigent person who does not
17 have and cannot obtain the money to pay the filing fee without using money needed for the
18 necessities of life. The filing of an appeal will not stay the effect of the hearing officer's
19 decision.

20 (~~114~~) Upon receipt of an appeal, the entire administrative record of the matter,
21 including the appeal, shall be filed with the Commission.

22 (~~1215~~) The Commission may in its discretion determine to hear an appeal. In
23 deciding whether to hear an appeal, the Commission shall consider, among other things,
24 fairness to the parties, hardship to either party and promotion of the policies and purposes of
25 this Article 49. In determining whether to hear an appeal the Commission may also review

1 material from the administrative record of the matter as it deems necessary. A vote of the
2 majority of the Commission shall be required for an appeal to be heard.

3 (~~13~~16) In those cases where the Commission is able to determine on the basis
4 of the documents before it that the hearing officer has erred, the Commission may without
5 determining whether to hear the appeal remand the case for further hearing in accordance
6 with its instructions without conducting an appeal hearing. Both parties shall be notified as to
7 the time of the re-hearing, which shall be conducted within 30 days of the remand by the
8 Commission. In those cases where the Commission is able to determine on the basis of the
9 documents before it that the hearing officer's findings contain numerical or clerical
10 inaccuracies, or require clarification, the Commission may continue the hearing for purposes
11 of referring the case back to said hearing officer in order to correct the findings.

12 (~~14~~17) Appeals accepted by the Commission shall be heard within 45 days of
13 the filing of an appeal. Within 30 days of the filing of an appeal, both parties shall be notified in
14 writing as to whether the appeal has been accepted. If the appeal has been accepted, the
15 notice shall state the time of the hearing and the nature of the hearing. Such notice must be
16 mailed at least 10 days prior to the hearing.

17 (~~15~~18) At the appeal hearing, the parties shall have an opportunity to present
18 oral and written argument in support of their positions. The Commission may in its discretion
19 allow the parties to present additional evidence that was not considered by the hearing officer.
20 After such hearing and after any further investigation which the Commission may deem
21 necessary, the Commission may, upon hearing the appeal, affirm, reverse or modify the
22 hearing officer's decision or may remand the case for further hearing in accordance with its
23 findings. The Commission's decision must be rendered within 45 days of the completion of the
24 hearing and the parties must be notified of such decision.

1 (~~1619~~) In accordance with the above subsection, the Commission shall give the
2 parties written notice of the decision. The notice shall state that the decision is final.

3 * * * *

4 (b) Civil Enforcement. The City or any applicant whose rights under this Article 49 have
5 been violated may bring a civil action in a court of competent jurisdiction against the Housing
6 Provider or other person violating this Article 49, and, upon prevailing, shall be entitled to such
7 legal or equitable relief as may be appropriate to remedy the violation including, but not limited
8 to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment
9 of an additional sum as liquidated damages in the amount of ~~\$500.00~~ to each employee,
10 applicant or other person whose rights under this Article 49 were violated for each day such
11 violation continued or was permitted to continue; appropriate injunctive relief; and, further shall
12 be awarded reasonable attorney's fees and costs. An applicant may institute a civil action under
13 this subsection (b) only if:

14 _____ (1) The applicant has filed a complaint with the Director of HRC;

15 _____ (2) 90 days have passed since the filing of the complaint;

16 _____ (3) After such 90-day period has passed, the applicant provides 30-day written
17 notice to the Director of HRC and the City Attorney's Office of his or her intent to initiate civil
18 proceedings; and

19 _____ (4) The City Attorney's Office has not provided notice to the applicant of the
20 City's intent to initiate civil proceedings by the end of the 30-day period.

21 * * * *

22 (f) Tracking of Complaints. HRC shall maintain a record of the number and types of
23 complaints it receives alleging violations of this Article, and the resolution of those complaints.
24 ~~This information shall be compiled on an annual calendar year basis and reported to the~~
25 ~~Board of Supervisors by January 31 of each year.~~ HRC shall report this information to the

1 Board of Supervisors within six months of the operative date of the ordinance in Board of
2 Supervisors File No. 171170 and then annually thereafter.

3 * * * *

4
5 Section 2. The Administrative Code is hereby amended by revising Sections 12T.1,
6 12T.4, 12T.6, and 12T.8 of Chapter 12T, to read as follows:

7
8 **SEC. 12T.1. DEFINITIONS.**

9 For the purposes of this Chapter 12T, the following words and phrases shall mean and
10 include:

11 * * * *

12 "Contract" shall mean an agreement for public works or improvements to be performed,
13 or for goods or services to be purchased or grants to be provided, at the expense of the City
14 or to be paid out of moneys deposited in the treasury or out of trust moneys under the control
15 or collected by the City. "Contract" does not include (1) Property Contracts, (2) agreements
16 entered into pursuant to settlement of legal proceedings, (3) contracts for urgent litigation
17 expenses as determined by the City Attorney, or (4) contracts for a cumulative amount of
18 \$5,000 or less per vendor in each fiscal year, ~~or (5) Excluded Contracts.~~

19 * * * *

20 "Property Contract" shall mean a written agreement, including a lease, permit, or
21 license ~~or easement~~, through which the City gives to a person or entity the right to exclusively
22 use or occupy real property owned or controlled by the City for a period of more than 29 days
23 in any calendar year, but excluding the following (collectively, "Excluded Property Contracts"):
24 (1) an agreement through which the City gives the right to use or occupy real property owned or
25 controlled by the City to ~~with~~ a public entity or public utility; (2) a revocable at-will permit

1 regardless of the ultimate duration of such permit, unless the permittee engages in a for-profit
2 activity on the City property; (3) regulatory permits, including street or public right of way
3 construction, excavation, and use permits; (4) agreements governing the use of City property
4 which constitutes a public forum for activities that are primarily for the purpose of espousing or
5 advocating causes or ideas and that are generally recognized as protected by the First
6 Amendment to the U.S. Constitution; or (5) agreements for activities which are primarily
7 recreational in nature, unless the user engages in a for-profit activity on the City property.

8 * * * *

9 **SEC. 12T.4. PROCEDURES FOR CONTRACTOR AND SUBCONTRACTOR USE**
10 **OF CRIMINAL HISTORY INFORMATION IN EMPLOYMENT DECISIONS.**

11 (a) Regarding applicants or potential applicants for employment, or employees, a
12 Contractor or Subcontractor shall not, at any time or by any means, inquire about, require
13 disclosure of, or if such information is received base an Adverse Action in whole or in part on:

14 (1) An Arrest not leading to a Conviction, excepting under circumstances
15 identified in this Section an Unresolved Arrest;

16 (2) Participation in or completion of a diversion or a deferral of judgment
17 program;

18 (3) A Conviction that has been judicially dismissed, expunged, voided,
19 invalidated, or otherwise rendered inoperative, by way of example but not limitation, under
20 California Penal Code ~~s~~Sections 1203.4, 1203.4a, or 1203.41;

21 (4) A Conviction or any other determination or adjudication in the juvenile
22 justice system, or information regarding a matter considered in or processed through the
23 juvenile justice system; ~~or~~

24 (5) A Conviction that is more than seven years old, the date of Conviction being
25 the date of sentencing; ~~or~~

1 (6) Information pertaining to an offense other than a felony or misdemeanor,
2 such as an infraction, except that a Contractor or Subcontractor may inquire about, require
3 disclosure of, base an Adverse Action on, or otherwise consider an infraction or infractions
4 contained in an applicant or employee's driving record if driving is more than a de minimis
5 element of the employment in question; or

6 (7) A Conviction that arises out of conduct that has been decriminalized since the date
7 of the Conviction, the date of the Conviction being the date of sentencing. Examples of statutes that
8 have decriminalized particular conduct include but are not limited to California Health and Safety
9 Code Sections 11362.1 and 11362.2.

10 Accordingly, the matters identified in this subsection (a) may not be considered in any
11 manner by the Contractor or Subcontractor.

12 (b) A Contractor or Subcontractor shall not require applicants or potential applicants
13 for employment or employees to disclose on any employment application the fact or details of
14 any Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-
15 (67). Nor shall the Contractor or Subcontractor inquire on any employment application about
16 the fact or details of any Conviction History, any Unresolved Arrest, or any matter identified in
17 subsections (a)(1)-(67). A Contractor or Subcontractor may ask on an employment application
18 for an applicant, potential applicant, or employee's written consent for a Background Check so
19 long as the application includes a clear and conspicuous statement that the Contractor or
20 Subcontractor will not itself conduct or obtain from a third party the Background Check until
21 ~~either after the first live interview with the person or after a conditional offer of employment in~~
22 accordance with subsection (c) of this Section 12T.4.

23 (c) A Contractor or Subcontractor shall not require applicants or potential applicants
24 for employment, or employees, to disclose, and shall not inquire into or discuss, their
25 Conviction History or an Unresolved Arrest until ~~either after the first live interview with the~~

1 person (via telephone, videoconferencing, use of other technology, or in person) or, at the
2 discretion of the Contractor or Subcontractor, after a conditional offer of employment. A
3 Contractor or Subcontractor may not itself conduct or obtain from a third party a Background
4 Check until either after the first live interview with the person or after a conditional offer of
5 employment.

6 * * * *

7
8 **SEC. 12T.6. IMPLEMENTATION AND ENFORCEMENT.**

9 (a) The OLSE is authorized to take appropriate steps to enforce and coordinate
10 enforcement of this Chapter 12T, including the investigation of possible violations of this
11 Chapter. The OLSE shall not find a violation based on a Contractor or Subcontractor's
12 decision that an applicant or employee's Conviction History is Directly-Related, but otherwise
13 may find a violation of this ~~Article~~Chapter, including if the Contractor or Subcontractor failed to
14 conduct the individualized assessment as required under Section 12T.4(f). ~~If multiple~~
15 ~~employees or applicants are impacted by the same procedural violation at the same time (e.g. all~~
16 ~~applicants for a certain job opening are asked for their conviction history on the initial application),~~
17 ~~the violation shall be treated as a single violation rather than multiple violations.~~

18 (b) An employee, applicant or other person may report to the OLSE any suspected
19 violation of this Chapter 12T. The OLSE shall encourage reporting pursuant to this subsection
20 (b) by keeping confidential, to the maximum extent permitted by applicable laws, the name
21 and other identifying information ~~off~~he ~~of~~the employee or person reporting the violation;
22 provided, however, that with the authorization of such person, the OLSE may disclose his or
23 her name and identifying information as necessary to enforce this Chapter or for other
24 appropriate purposes.

1 (c) A Contractor or Subcontractor shall be deemed to have breached the provisions
2 regarding the procedures for use of Conviction History in employment upon a finding by the
3 OLSE that the Contractor or Subcontractor has willfully violated these provisions, ~~provided,~~
4 ~~however, that for a first violation, or for any violation during the first twelve months following the~~
5 ~~operative date of this Chapter, the OLSE must issue warnings and notices to correct, and offer the~~
6 ~~Contractor or Subcontractor technical assistance on how to comply with the requirements of this~~
7 ~~Chapter except as provided in the second sentence of subsection (f) of this Section 12T.6.~~

8 ~~(d) Upon a subsequent finding of a violation of this Chapter, the awarding authority shall~~
9 ~~notify the Contractor or Subcontractor that unless the Contractor or Subcontractor demonstrates to the~~
10 ~~satisfaction of the OLSE within such reasonable period as the OLSE shall determine, that the violation~~
11 ~~has been corrected, action will be taken as set forth in subparagraphs (g) through (j) hereof.~~

12 (ed) The Director of the OLSE shall establish rules governing the administrative
13 process for determining and appealing violations of this Chapter 12T. The Rrules shall include
14 procedures for:

15 (1) providing the Contractor or Subcontractor with notice that it may have
16 violated this Chapter;

17 (2) providing the Contractor or Subcontractor with a right to respond to the
18 notice;

19 (3) providing the Contractor or Subcontractor with notice of the OLSE's
20 determination of a violation;

21 (4) providing the Contractor with an opportunity to appeal the OLSE's
22 determination to a hearing officer, who is appointed by the City Controller or his or her
23 designee.

24 (fe) If there is an appeal of the OLSE's determination of a violation, the hearing before
25 the hearing officer shall be conducted in a manner that satisfies the requirements of due

1 process. In any such hearing, the OLSE's determination of a violation shall be considered
2 prima facie evidence of a violation, and the Contractor or Subcontractor shall have the burden
3 of proving, by a preponderance of the evidence, that the OLSE's determination of a violation
4 is incorrect. The hearing officer's decision of the appeal shall constitute the City's final
5 decision.

6 (gf) This subsection (f) applies to violations occurring during the term of a Contract entered
7 into prior to the effective date of the ordinance in Board of Supervisors File No. 171170 amending this
8 Chapter 12T. For a first violation, or for any violation during the first twelve months following the
9 operative date of this Chapter, the OLSE must issue warnings and notices to correct, and offer the
10 Contractor or Subcontractor technical assistance on how to comply with the requirements of this
11 Chapter. Upon a subsequent finding of a violation of this Chapter, the awarding authority shall notify
12 the Contractor or Subcontractor that unless the Contractor or Subcontractor demonstrates to the
13 satisfaction of the OLSE within such reasonable period as the OLSE shall determine, that the violation
14 has been corrected, action will be taken as set forth in this subsection (f) and subsections (h) through
15 (j) of this Section 12T.6. For a second violation, the awarding authority may deduct from the
16 amount payable to the Contractor or Subcontractor by the City under any Contract subject to
17 this Chapter, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of \$50
18 for each employee, applicant or other person as to whom the violation occurred or continued.
19 Thereafter, for subsequent violations, the penalty may increase to no more than \$100, for
20 each employee or applicant whose rights were, or continue to be, violated. Such funds shall
21 be allocated to the OLSE and used to offset the costs of implementing and enforcing this
22 Chapter. If multiple employees or applicants are impacted by the same procedural violation at the
23 same time (e.g. all applicants for a certain job opening are asked for their conviction history on the
24 initial application), the violation shall be treated as a single violation rather than multiple violations.

1 (g) This subsection (g) applies to violations occurring during the term of a Contract entered
2 into on or after the effective date of the ordinance in Board of Supervisors File No. 171170 amending
3 this Chapter 12T. For a first violation, the awarding authority may deduct from the amount payable to
4 the Contractor or Subcontractor by the City under any Contract subject to this Chapter, or the OLSE
5 may impose upon the Contractor or Subcontractor, a penalty of \$500 for each employee, applicant or
6 other person as to whom the violation occurred or continued. For a second violation, the awarding
7 authority may deduct from the amount payable to the Contractor or Subcontractor by the City under
8 any Contract subject to this Chapter, or the OLSE may impose upon the Contractor or Subcontractor, a
9 penalty of no more than \$1,000 for each employee, applicant or other person as to whom the violation
10 occurred or continued. Thereafter, for subsequent violations, the awarding authority may deduct from
11 the amount payable to the Contractor or Subcontractor by the City under any Contract subject to this
12 Chapter, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of no more than
13 \$2,000, for each employee or applicant whose rights were, or continue to be, violated. The
14 administrative penalties for each violation shall be paid to the employee or applicant as to whom the
15 violation occurred or continued. If multiple employees or applicants are impacted by the same
16 procedural violation at the same time (e.g. all applicants for a certain job opening are asked for their
17 Conviction History on the initial application), the violation shall be treated as one violation for each
18 impacted employee or applicant.

19 * * * *

20 **SEC. 12T.8. NONAPPLICABILITY, EXCEPTIONS, AND WAIVERS.**

21 * * * *

22 (k) Waivers granted to a Contractor pursuant to this Section 12T.8 shall relieve that
23 Contractor of any obligations it may have under Article 49 of the Police Code, but only with respect to
24 work performed under the Contract or Property Contract for which the waiver was granted.

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Section 3. Effective and Operative Dates.

(a) Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

(b) Operative Date. This ordinance shall become operative on ~~July~~ October 1, 2018.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
JOSHUA S. WHITE
Deputy City Attorney

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