



Citywide Fair Chance Hiring Ordinance

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Background

- 2-Minute Policy Pitch:
 - Council member McGee requested a work session for the Council to discuss a Fair Chance Hiring ordinance that would apply to employers within the City limits.
 - Delivered and supported by Council on August 2, 2022

Fair Chance Hiring Ordinances in General

- Fair Chance Hiring (aka, “Ban the Box”), generally:
 - The policy or practice of not considering an applicant’s criminal history in an employment application until later in the hiring process.
 - Does not limit authority to withdraw employment offer for a lawful reason
- According to National Employment Law Project (NELP),
 - 37 states and 150 cities/counties enacted fair chance laws for themselves as public employers
 - Of these, 15 states and 22 cities/counties extend these to private employers

Existing State and Federal Requirements

- Title VII of the Civil Rights Act of 1964
 - Employers can request criminal history information, provided it does not result in unequal treatment with respect to a protected class
 - To avoid discrimination, employers conduct an individualized assessment of candidate's criminal record
- Some federal and state laws require a criminal background check be performed for some positions
 - Peace officers, CJIS certifications, insurance, childcare, energy, etc.
 - No requirement as to when this should be performed within the statute

Existing State and Federal Requirements

- No federal or State of Texas laws prohibit inquiring about an applicant's criminal history prior to a conditional employment offer
- EEOC best practice recommendations suggest employers consider asking criminal history questions later in the hiring process

Local Regulation of Fair Chance Hiring

- Businesses may, to some degree, utilize Fair Chance Hiring due to existing corporate requirements or utilization of best practices
 - The City of Denton as an employer does not inquire about criminal history or conduct a background check until after a conditional offer of employment has been made
- Most cities/counties listed with NELP have enacted Fair Chance Hiring laws that apply only to their organization as an employer
 - An even greater number may utilize this practice outside of a formal ordinance, like the City of Denton



Local Regulation of Fair Chance Hiring

- In Texas, the following cities have enacted **formal** laws relating to Fair Chance Hiring:

Applies Only to Organization	Applies Across Jurisdiction
Dallas County	City of Austin
City of San Antonio	City of DeSoto
Travis County	
Harris County (2022)	

Potential Ordinance Considerations

- Definitions
- Applicability and Exemptions
- Requirements
- Administration
- Investigation
- Penalty

Potential Exclusions/Exemptions

- Other governmental entities
 - County, school districts, higher education, etc.
- Positions where federal, state, or other local law requires disqualification based on criminal history
- Entities with less than 15 full-time employees

Early Feedback from Businesses

- Staff reached out to local businesses through the Chamber
- Did not generally support a fair chance hiring ordinance
 - Expressed support for voluntary programs
- Feedback on a potential ordinance focused on:
 - Concern if this is a solution without a problem
 - Economic impact of restarting hiring processes
 - If there were better ways to promote second-chance hiring
 - Public education may be a challenge

Implementation Considerations

- The City does not have the capacity to conduct investigations
- Implementation could follow the model set out in the non-discrimination ordinance:
 - Complaint submitted to City
 - City refers the complaint to a third-party investigator
 - Referral of investigation to City Prosecutor for possible citation (if criminal penalty provision included)
 - Would anticipate similar enforcement challenges as advised during the development of the non-discrimination ordinance

Direction

- Options for Council Direction
 1. Direction to provide a draft ordinance for further review and discussion at a future work session
 2. Direction to provide additional information at a future work session
 3. No direction
 4. Other