

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON AMENDING CHAPTER 14, ARTICLE VIII OF THE CODE OF ORDINANCES (NON-DISCRIMINATION IN PUBLIC ACCOMMODATIONS, EMPLOYMENT PRACTICES, AND HOUSING), TO ADD A FAIR CHANCE HIRING PROVISION TO SECTION 14-203-5 SETTING HIRING STANDARDS TO LIMIT EMPLOYERS' CONSIDERATION OF THE CRIMINAL HISTORY ON AN INITIAL JOB APPLICATION; PROVIDING SEVERABILITY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION AND CODIFICATION; PROVIDING FOR A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton recognizes that people with criminal histories suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits; and

WHEREAS, an employer's neutral policy (e.g., excluding applicants from employment based on certain criminal conduct) can disproportionately impact some individuals based on their race or national origin as described in the U.S. Equal Employment Opportunity Commission Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act, EEOC Enforcement Guidance No. 915.002; and

WHEREAS, the City of Denton recognizes that legal protections extended to most protected classes under federal and state law do not apply to persons with criminal histories; and

WHEREAS, the City of Denton seeks to assist with the successful reintegration of formerly incarcerated people into the community after their release; and

WHEREAS, lack of employment is a principal factor for recidivism, with people who are employed proving significantly less likely to be re-arrested; and

WHEREAS, removal of obstacles to employment for people with criminal histories increases public health and safety by providing economic and social opportunities to large groups of citizens; and

WHEREAS, people with criminal histories represent a group of job seekers who are ready to contribute and add to the workforce; and

WHEREAS, the City Council finds that denying an employment opportunity to an otherwise qualified person based on the person's criminal history that is not relevant to the job under consideration is unjust; is detrimental to the health, safety, and welfare of the residents of the City; prevents the reintegration of the person into the community; creates a burden on public resources and law enforcement; contributes to crime and recidivism; and contributes to unemployment and harms the local economy; and

WHEREAS, the Council further finds that it is within the police power and the responsibility of the City to remedy the problems enumerated in herein; and

WHEREAS, the City Council declares it to be the public policy of the City that all persons subject to its jurisdiction should enjoy equal human rights, including the ability to earn wages through gainful employment, without being subject to discrimination based on their criminal history; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference to the body of this Ordinance as if fully set forth herein.

SECTION 2. The City Council finds that adopting this amendment to Chapter 14, Article VIII, that Section 14-203-5 of the City Code of Ordinances removes an obstacle to employment for people with criminal histories, increases public health and safety by providing economic and social opportunities to large groups of citizens, ameliorates the disproportionate impact of certain hiring practices on individuals based on their race or national origin, and enhance the quality of life of the citizens of the City of Denton and serves a compelling governmental interest.

SECTION 3. Chapter 14, Article VIII of the City of Denton Code of Ordinances, entitled “Non-Discrimination in Public Accommodations, Employment Practices, and Housing,” is hereby amended to add Section 14-203-5(c), entitled “Fair Chance Hiring,” and provided as follows:

“Sec. 14-203-5: Employment Practices

...

(c) Fair Chance Hiring

(1) Policy Declarations.

(a) The City of Denton celebrates its diverse population, and to that end, it is hereby declared to be the public policy of the City of Denton that all persons subject to its jurisdiction should enjoy equal human rights, including the ability to earn wages through gainful employment.

(b) The City of Denton recognizes that legal protections extended to most protected classes under federal and state law have not been extended to protect individuals with criminal histories, but that excluding applicants for employment based on criminal history may result in discrimination, whether by intent or by unlawful disparate impact, that denies equal employment opportunities due to an applicant’s race, color, national origin, age, religion, disability, sex, sexual orientation, or gender identity.

(c) The City of Denton recognizes that an employer that rejects everyone with a criminal conviction from all employment opportunities is likely engaging in

discrimination, and that an employment policy that rejects many more applicants of one race, color, national origin, age, religion, disability, sex, sexual orientation, or gender identity is discriminatory if the policy is not closely related to the job.

(d) The City of Denton has determined that employers waiting until later in the hiring process to inquire about an applicant's criminal history will reduce discrimination, whether by intent or by unlawful disparate impact, that denies equal employment opportunities due to race, color, national origin, age, religion, disability, sex, sexual orientation, or gender identity.

(2) *Definitions:*

(a) In addition to the definitions in Section 14-203-2, the following definitions also apply to Subsection 14-203-5(c).

(b) In Subsection 14-203-5(c), the following words, terms, and phrases, when used, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

Adverse Action means an employer's refusal to hire, a refusal to promote, or the revocation of an offer of employment.

Applicant means an individual who submits an initial job application or other documentation for employment.

Conditional Employment Offer means an oral or written offer by an employer to employ an individual in a job, or placement in an employment agency's staffing pool, that is conditioned on the employer's evaluation of the individual's criminal history.

Conviction means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor, provided that the conviction is one for which the person has been placed on probation, fined, imprisoned, or paroled.

Criminal History means an arrest, conviction, plea of nolo contendere, or deferred adjudication arising from a felony criminal accusation, or a Class A or Class B misdemeanor criminal accusation, made under state law, federal law, or a comparable law of another state of the United States.

Criminal History Report means any criminal history report, including, but not limited to, those produced by the Texas Department of Public Safety, National Crime Information Center (NCIC), Federal Bureau of Investigation, other law enforcement or police agencies, or courts, or by any consumer reporting agency or business or employment screening agency or business.

Employment means to work for an employer for pay. The term includes full time work, part time work, temporary or seasonal work, contract work, casual or contingent work, work through the services of a temporary or other employment agency, and participation in a vocational, apprenticeship, or educational training program.

Individualized Assessment means an evaluation of the criminal history of an individual that includes, at a minimum, the following factors:

- (1) the nature and gravity of any offenses in the individual's criminal history;
- (2) the length of time since the offense and completion of the sentence;
and
- (3) the nature and duties of the job for which the individual has applied.

Initial Job Application means the first written or oral expression of interest in a job by an individual made in compliance with the employer's established criteria for receiving expressions of interest.

Job means an employment position with an employer for which the employer has solicited or accepted applications and which the employer is currently attempting to fill.

Staffing Pool means a list of individuals retained by an employment agency before the assignment of a specific job to perform for another employer.

(3) *Applicability*

- (a) Subsection 14-203-5(c) applies to an employer as defined in Section 14-203-2.
- (b) Subsection 14-203-5(c) does not apply to employment for which an individual may be disqualified based on the individual's criminal history under a federal, state, or local law, or compliance with legally mandated insurance or bond requirement.
- (c) Nothing in Subsection 14-203-5(c) limits an employer's authority to make a hiring decision for any lawful reason, including the determination that an individual is unsuitable for the job based on an individualized assessment of the applicant's criminal history.

(4) *Fair Chance Hiring Practices*

(a) An employer may not commit any of the following listed actions where such action results in discrimination, whether by intent or by unlawful disparate impact, that denies an applicant an equal employment opportunity due to race, color, national origin, age, religion, disability, sex, sexual orientation, or gender identity:

- (1) An employer may not publish or cause to be published information about a job that states or implies that an individual's criminal history automatically disqualifies the individual from consideration for the job.
- (2) An employer may not solicit or otherwise inquire about the criminal history of an individual in an initial job application for a job.
- (3) An employer may not inquire in oral or written form about an applicant's criminal history, solicit a criminal history report about an applicant, or consider an applicant's criminal history before the employer has first made a conditional employment offer to the applicant. This does not preclude an employer from explaining to applicant, in writing, the individualized assessment process that the employer uses to consider criminal history.
- (4) An employer may not refuse to consider employing an individual in a job because the individual did not provide criminal history information before the individual received a conditional employment offer.
- (5) An employer may not take adverse action against an individual because of the individual's criminal history unless the employer has determined that the individual is unsuitable for the job based on an individualized assessment conducted by the employer.
- (6) An employer who takes adverse action against an individual based on the individual's criminal history must inform the individual in writing that the adverse action was based on the individual's criminal history.
- (7) Notwithstanding any other part of Subsection 14-203-5(c), an employment agency may solicit criminal history information about an individual and make an individualized assessment of an individual's criminal history before the staffing agency places the individual in a staffing pool or has identified a job to which the individual will be employed."

SECTION 4. This Ordinance shall be cumulative of all provisions of ordinances of the City of Denton, except where the provisions of this Ordinance are in direct conflict with the provisions

of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 5. All other provisions of Chapter 14, Article VIII apply to Fair Chance Hiring except where there is a direct conflict with a specific provision of Section 14-203-5(c), in which case the specific provision of Section 14-203-5(c) shall control.

SECTION 6. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 7. The City Secretary is hereby directed to record and publish the above regulations in the City's Code of Ordinances.

SECTION 8. Any person violating any provision of this Ordinance shall, upon conviction, be found guilty of a Class "C" misdemeanor and fined a sum not to exceed five hundred dollars (\$500.00) for each violation.

SECTION 9. This Ordinance shall become effective one hundred-twenty (120) calendar days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this Ordinance to be published twice in the *Denton Record-Chronicle*, the official newspaper of the City of Denton, Texas, within ten (10) days of the date of its passage.

The motion to approve this Ordinance was made by _____ and seconded by _____; this Ordinance was passed and approved by the following vote [___- ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: 