



# City of Denton

City Hall  
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Denton, Texas  
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## AGENDA INFORMATION SHEET

**DEPARTMENT:** City Manager's Office

**CM/DCM/ACM:** Sara Hensley, City Manager

**DATE:** Dec. 5, 2023

### **SUBJECT**

Hold a public hearing to receive comments from the public regarding a proposed Fair Chance Hiring ordinance for the City of Denton, and provide any direction to staff on the proposed ordinance.

### **BACKGROUND**

On Aug. 2, 2022, Council Member McGee presented a 2-minute policy pitch to the Council requesting support for a work session to discuss an ordinance regulating the use of criminal history questions on job applications. As pitched, the ordinance would apply to employers citywide (except as referenced below) and, generally, could mirror similar "fair chance hiring" or "ban the box" ordinances adopted in other cities or states. A future work session on this topic was supported. On Nov. 3, 2022, the City Council was provided with basic information regarding fair chance hiring ordinances and provided direction for staff to hold an additional work session discussion on ordinance components. On Dec. 6, 2022, a second work session was held to outline components of a draft ordinance with no further direction being provided to staff. On June 6, 2023, Council Member McGee presented a 2-minute policy pitch to the Council requesting the draft ordinance be brought to the Council at the next meeting for consideration and vote. That pitch received support from the Council and a proposed Fair Chance Hiring ordinance was brought forward for consideration on June 27, 2023. At that meeting, the Council postponed consideration of the ordinance until the first meeting in January 2024 and requested staff seek community and business feedback on the ordinance prior to that time.

### **Fair Chance Hiring Overview**

Fair chance hiring initiatives (also known as "ban the box" initiatives due to their goal of removing criminal history question boxes in job applications) generally refer to a policy or practice of not considering an applicant's criminal history in an employment application until later in the hiring process. This information is then typically obtained once a conditional offer has been made. Importantly, these initiatives and their related ordinances, do not limit the authority of an employer to withdraw an 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. Most cities and counties listed with NELP as having enacted fair chance hiring laws have only had those laws apply to their organization as an employer. An even greater number may utilize this practice outside of a formal ordinance, like the City of Denton.

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)	

### **Existing Laws and Statutes**

Title VII of the Civil Rights Act of 1964, does not restrict employers from requesting criminal history information at any stage in the hiring process but they should be cautious that doing so does not have an adverse impact against a particular class of applicants. To avoid discrimination that denies equal employment opportunity to anyone on a protected basis, whether by intent or by unlawful disparate impact, employers conduct an individualized assessment of a candidate’s criminal record and the position sought.

Additionally, some federal and state laws require a criminal background check to be performed for some positions. These include peace officers, Criminal Justice Information Services (CJIS) certifications, and certain positions in other sectors such as insurance, childcare, energy, etc. There is no requirement as to when a criminal background check should be performed under these statutes.

With respect to criminal history inquiries across all job types, no federal or State of Texas laws prohibit inquiring about an applicant’s criminal history prior to a conditional employment offer, though the Equal Employment Opportunity Commission (EEOC) states that an employer that rejects *everyone* with a conviction from all employment opportunities is likely engaging in discrimination. Also, the EEOC states that an employment policy that rejects many more applicants of one race, national origin, or sex is discriminatory if the policy is not closely related to the job. The EEOC suggests employers consider waiting until later in the hiring process if they are going to ask criminal history questions.

Council received a legal status report on June 16, 2023, regarding local authority to regulate fair chance hiring.

### **Proposed Fair Chance Hiring Ordinance Structure**

The ordinance presented incorporates fair chance hiring regulations into the current Comprehensive Non-Discrimination Ordinance (NDO), codified as Chapter 14, Article VIII of the code of ordinances. In this manner, employment protections already provided under the NDO would be extended to include persons with criminal histories under a new section. Additionally, new definitions specific to fair chance hiring would also be incorporated into the NDO. By including fair chance hiring regulations in the NDO, the same administrative and enforcement provisions would apply to fair chance hiring complaints in the same manner that they currently do for NDO complaints. Importantly, this would not add any protected classes to the NDO.

### **Regulated Fair Chance Hiring Practices**

The fair chance hiring provisions prohibit employers from the following practices if they result in unlawful discrimination (whether such discrimination is intentional or through disparate impact):

1. Publishing information that states or implies that criminal history is an automatic disqualifier for employment
2. Soliciting or otherwise inquiring about criminal history on a job application
3. Soliciting criminal history information or considering criminal history prior to a conditional employment offer

4. Refusing to consider an applicant because criminal history was not provided prior to a conditional employment offer
5. Taking adverse action against an individual due to criminal history unless the individual is unsuitable for the job based on an individualized assessment

Staffing agencies may solicit criminal history information and perform an individualized assessment when the staffing agency has identified a job to which the individual will be employed or the individual is placed in a staffing pool.

Additionally, an employer who takes an adverse action based on criminal history must inform the individual in writing that the adverse action was based on the criminal history. The regulation also does not absolve the employer from any other federal or state requirements, as applicable, when withdrawing an offer of employment.

### **Applicability and Exclusions**

The fair chance hiring regulations will apply to all employers in which the NDO is currently applied. This is generally all employers with 15 or more employees. Additionally, the same exemptions within the NDO would also be applied to the fair chance hiring regulations:

- Religious organizations
- The United States Government or its departments and agencies
- The State of Texas or its departments, agencies, and political subdivisions

An additional exemption specific to fair chance hiring regulations includes positions for which an individual may be disqualified based on criminal history under federal, state, or local law. This includes peace officers and certain positions in fields such as insurance, childcare, the energy sector, etc.

### **Administration and Enforcement**

If fair chance hiring regulations are included in the NDO, all administrative and enforcement provisions currently applied to NDO complaints would also apply to fair chance hiring complaints. Just as the NDO directs that for complaints where the state or federal government has jurisdiction, those complainants be referred to those entities, fair chance hiring complainants will be referred to the Equal Employment Opportunity Commission or other applicable state or federal agency. Should such federal or state agency determine it does not have jurisdiction to investigate the complaint, the City may perform an investigation using the processes under the NDO.

### **Additional Considerations**

In addition to the ordinance, there are additional considerations regarding the proposed ordinance's impact that the Council may weigh:

1. Cost and Resources – the costs to administer this ordinance are based on the number of complaints the City receives. As a result, the full cost of this ordinance cannot be estimated and there are currently no funds budgeted to implement this ordinance. Additionally, should a high number of complaints be received, additional staff resources may be required.
2. Costs to Businesses – in addition to the business owner concerns provided to the Council on Nov. 3, 2022, businesses may incur additional costs as they may need to seek and pay for outside professional or legal advice to implement new requirements according to law, such as adverse action letters.
3. Jurisdictional Confusion - Confusion may arise when a City of Denton business hires candidates in a different jurisdiction, such as through a regional, state, or national headquarters, or under a corporate system.

### **Public Feedback and Engagement**

Staff is concluding a 2-month long engagement and feedback period. During this time the City conducted 3 in-person listening sessions, 2 virtual listening sessions, and created a Discuss Denton project page ([www.discussdenton.com/fairchancehiring](http://www.discussdenton.com/fairchancehiring)) for members of the public to:

- Review information and FAQs;
- Leave a comment;
- Ask a question; and
- Voice support/opposition

A complete report of the feedback and input received will be provided to the council in December 2023, prior to its consideration of the proposed ordinance in January 2024.

As with the NDO, staff has included a 120-day delay in the effective date of the ordinance to communicate the provision of the ordinance to the community.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

June 27, 2023:	City Council Consideration (Postponement)
June 6, 2023:	Work Session (2-Minute Policy Pitch)
Dec. 6, 2022:	Work Session Discussion
Nov. 3, 2022:	Work Session Discussion
Aug. 2, 2022:	Work Session (2-Minute Policy Pitch)

### **EXHIBITS**

1. Agenda Information Sheet
2. Presentation
3. Proposed Ordinance
4. Comprehensive Non-Discrimination Ordinance

Respectfully submitted:  
Ryan Adams  
Chief of Staff