

ORDINANCE NO.: 2019-022

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 2, Administration, to add Article VII Conviction and Wage History Prohibition in City Employment and by City Contractors and City Vendors

WHEREAS, the ability of people with records to successfully reintegrate into their communities contributes to reduced recidivism, strengthens families, and leads to safer communities; and,

WHEREAS, people with records suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits; and,

WHEREAS, certain populations are arrested, convicted, and incarcerated in numbers disproportionate to their representation in the population as a whole; and,

WHEREAS, many people with records in the City are likely to be unemployed or underemployed; and,

WHEREAS, people with records represent a workforce that have skills to contribute and a desire to add value to their community; and,

WHEREAS, the City of Columbia seeks to assist the rehabilitation of people with records and ensure healthier, safer communities; and,

WHEREAS, studies indicate that stable employment is one of the best predictors of post-conviction success; and,

WHEREAS, states and cities across the country have adopted fair chance hiring policies to remove unfair barriers to employment of people with records; and,

WHEREAS, the U.S. Equal Employment Opportunity Commission, to maximize compliance with federal anti-discrimination law, recommends delaying inquiry of a job applicant's conviction history and considering the job-relatedness of the conviction taking into account length of time since conviction, and providing an individualized assessment affording the opportunity to correct any inaccuracies and to submit evidence of mitigation or rehabilitation; and,

WHEREAS, it is the public policy of the City to encourage the employment of people previously convicted; and,

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WHEREAS, the gender wage gap has narrowed by less than one-half a penny per year in the United States since 1963, when the Congress passed the Equal Pay Act, the first law aimed at prohibiting gender-based pay discrimination, according to the National Committee on Pay Equity; and,

WHEREAS, in August of 2016, Massachusetts became the first state to enact a law prohibiting employers from seeking or requiring a prospective employee's wage history; and,

WHEREAS, since women are paid on average lower wages than men, basing wages upon a worker's wage at a previous job only serves to perpetuate gender wage inequalities and leave families with less money to spend on food, housing, and other essential goods and services; and,

WHEREAS, salary offers should be based upon the job responsibilities of the position sought and not based upon prior wages earned by the applicant; NOW, THEREFORE,

BE IT ORDAINED by the Mayor and Council this 6th day of August, 2019 that the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 2, Administration is hereby amended to add Article VII Conviction and Wage History Prohibition in City Employment and by City Contractors and City Vendors, to read as follows:

**ARTICLE VII. CONVICTION AND WAGE HISTORY PROHIBITION IN CITY EMPLOYMENT
AND BY CITY CONTRACTS AND CITY VENDORS**

Sec. 2-351. Purpose.

The purpose of this article is to ensure that the hiring practices of the City of Columbia do not, and urge private employers and government contractors doing business with the City of Columbia, to not unfairly deny people with arrest and conviction records employment and to further encourage rehabilitation of people with records to strengthen communities as well as to ensure that salary offers are based upon the job responsibilities of the position sought and not based upon the prior wages earned by the applicant.

Sec. 2-352. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this Code, have the meanings shown in this section. Where terms are not defined, through the methods authorized by this section, such terms shall have ordinarily accepted meaning such as the context implies.

Adverse action means to refuse to hire, to not promote, to discharge a person, or to revoke an applicant's conditional offer of employment.

Applicant means any person considered for, or who requests to be considered for, employment or any employee considered for, or who requests to be considered for, another employment position, by the employer.

Awarding authority means any department, agency, or office of the City that authorizes a vendor to provide requested goods and/or perform services.

City means the city, department, agency, or office thereof.

Employer means the City, private employers and government contractors; and any person regularly employing five or more persons; any person acting as an agent of an employer, directly or indirectly; or any person undertaking for compensation to procure employees or opportunities for employment.

Employment means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay.

To inquire means to ask a job applicant in writing or otherwise.

Vendor means any vendor, contractor, or supplier of goods or services to the City.

Wages means all earnings of an employee, regardless of whether determined on time, task, piece, commission or other method of calculation and including fringe benefits, wage supplements, or other compensation whether payable by the employer from employer funds or from amounts withheld from employee's pay by the employer.

Sec. 2-353. Considering Conviction History in Employment Decisions

(a) *Identifying position as requiring background check.* The employer shall not conduct background checks on applicants unless the employer has made a good faith determination that the relevant position is of such sensitivity that a background check is warranted or if a background check is required by law.

(b) *Posting job announcements.* All job announcements and position descriptions shall contain the following information if the position requires a background check, unless otherwise required by law: "This position is subject to a background check for any convictions directly related to its duties and responsibilities. Only job-related convictions will be considered and will not automatically disqualify the candidate."

(c) *Job applications.* Job applications shall not inquire into an applicant's conviction history.

(d) *Notice of rights.* Prior to any conviction history check, the employer shall send the applicant a conditional offer letter, notice of rights under this ordinance, and a request for authorization to conduct a background check, if so required.

(e) *Limitation to conviction history.* The employer shall not use or access the following criminal records in relation to a background check: records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.

(f) *Conviction history inquiry.* The employer shall not inquire into or consider an applicant's conviction history until after the applicant has received a conditional offer. If the employer is considering the conviction history of the applicant, the employer shall consider job-related convictions only. If a statute explicitly requires that certain convictions are automatic bars to employment, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction. In determining if a conviction is job-related, the employer shall consider:

- (1) Whether the conviction is directly related to the duties and responsibilities of that employment position;
- (2) Whether the position offers the opportunity for the same or a similar offense to occur;
- (3) Whether circumstances leading to the conduct for which the person was convicted will recur in the position; and
- (4) The length of time since the offense occurred.

(g) *Pre-adverse action notice.* If an applicant's conviction history contains information that may be the basis for an adverse action, the employer shall:

- (1) Identify the conviction item(s) that are the basis for the potential adverse action;
- (2) Provide a copy of the conviction history report, if any;
- (3) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and,
- (4) Provide the applicant with an individualized assessment as described below.

(h) *Individualized assessment.* A job-related conviction shall not be the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have ten (10) business days, after issuance of the notice, to respond with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The employer shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the U.S. Equal Employment Opportunity Commission.

(i) *Evidence of mitigation or rehabilitation.* Evidence of mitigation or rehabilitation may be established by:

(1) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with terms and conditions of probation or parole; or

(2) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.

(j) *Final notice.* If the employer makes an adverse decision, the applicant shall be informed of the final decision and that he or she may be eligible for other positions.

(k) *Confidentiality.* Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the employer or any of its agencies, or its vendors, to any other entity, except as required by law.

Sec. 2-354. Prohibition on Inquiries into Wage History.

(a) *Prospective employees.* The City shall not inquire about a prospective employee's wage history, require disclosure of wage history, or condition employment or consideration for an interview or employment on disclosure of wage history, or retaliate against a prospective employee for failing to comply with any wage history inquiry or for otherwise opposing any act made unlawful by this ordinance.

(b) *Salary or contract negotiations.* The City shall not rely on the wage history of a prospective employee from any current or former employer of the individual in determining the wages for such individual at any stage in the employment process, including the negotiation or drafting of any employment contract, unless such applicant knowingly and willingly disclosed his or her wage history to the employer, employment agency, employee, or agent thereof.

(c) *Job applications.* Job applications shall not inquire into an applicant's wage history.

Sec. 2-355. Vendors

(a) The City encourages vendors that do business with the City to adopt and employ conviction and wage history policies, practices, and standards that are consistent with City standards outlined in this chapter.

(b) During the bid or contracting process, the Awarding Authority can review all vendors' conviction and wage history policies for consistency with City standards. The vendors' conviction and wage history standards can be part of the criteria to be evaluated by the City when determining whether to award a City contract. Further, the City will be able to evaluate a vendor's execution of the conviction and wage history standards as a part of the performance criteria of said City contract(s). The Awarding Authority can, if it so chooses, consider these conviction and wage history standards when considering all City contracts.

Sec. 2-356. Compliance

(a) *Records.* The employer shall retain application forms, records of employment, and other pertinent data and records required under this chapter, including but not limited to, communication with the applicant, for a minimum of three years, and shall allow access to such records to appropriate entities if a dispute shall arise regarding the provisions of this chapter.

(b) *Data Collection.* The employer shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants and the number of applicants who were provided a conditional offer. In addition, the employer shall maintain a record of the number of applicants with a record for a position:

- (1) who were provided a pre-adverse action notice;
- (2) who provided evidence of mitigation or rehabilitation;
- (3) who were provided a final adverse notice; and
- (4) who were hired.

This ordinance shall be effective upon final reading.

Requested by:

Mayor Benjamin

Mayor

Approved by:

City Manager

Approved as to form:

City Attorney

Introduced: 7/9/2019

Final Reading: 8/6/2019

ATTEST:

City Clerk