

ORDINANCE NO. 2016-4012

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION," ARTICLE VI, "PROCUREMENT," DIVISION 3, "CONTRACT PROCEDURES," BY CREATING SECTION 2-376, ENTITLED "FAIR CHANCE REQUIREMENT FOR CITY CONTRACTORS," AND AMENDING CHAPTER 62, "HUMAN RELATIONS," BY CREATING ARTICLE V, TO BE ENTITLED THE "FAIR CHANCE ORDINANCE," TO PROVIDE REGULATIONS REGARDING THE CONSIDERATION BY THE CITY AND BY CITY CONTRACTORS OF THE CRIMINAL HISTORY OF APPLICANTS FOR EMPLOYMENT, AND TO PROVIDE LIMITING PROVISIONS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, people with criminal 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, members of racial minorities are arrested, convicted, and incarcerated in numbers disproportionate to their representation in the population as a whole; and

WHEREAS, as recognized in the Harvard Public Health Review, the "[r]outine exclusion of people with criminal records from the workforce has drastic consequences for individuals, families, and the economy. Job discrimination against those with criminal histories fuels poverty, recidivism and ultimately poor health in vulnerable populations"; and

WHEREAS, "ban the box" policies and laws prohibit employers from asking questions about an applicant's criminal history upon initial contact, and require employers to make individualized assessments about the relevance of a prior offense to the job; and

WHEREAS, according to the National Employment Law Project ("NELP"), research indicates that "personal contact with an applicant reduces the negative effect of a criminal record on the employment decision"; and

WHEREAS, this Ordinance integrates U.S. Equal Employment Opportunity Commission ("EEOC") guidance on arrest and conviction guidelines, which guidance requires employers to consider (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense or conduct and/or completion of the sentence; and (3) the nature of the job held or sought; and

WHEREAS, according to NELP, over 100 cities and counties nationwide, and a total of 21 states, have adopted "ban the box" policies; and

WHEREAS, in Florida, the following local governments have adopted "ban the box" policies: Miami-Dade County, Clearwater, Daytona Beach, Fort Myers, Gainesville, Jacksonville, Orlando, Pompano Beach, St. Petersburg, Tampa, and Tallahassee; and

WHEREAS, the Mayor and City Commission desire to encourage the employment of individuals who have been previously arrested and/or convicted; and

WHEREAS, pursuant to Ordinance No. 2016-3996, which was enacted pursuant to Section 166.0442, Florida Statutes, the City is required to conduct background screening investigations for (1) any position of City employment, whether paid, unpaid, or contractual, and (2) any City contractor, employee of a City contractor, or City vendor who has direct contact with individual members of the public or access to any public facility or publicly operated facility; and

WHEREAS, the City is currently not required to include on its employment applications "the box" (i.e., the question of whether an applicant has a criminal history), which can intimidate applicants and preclude them from applying for a City employment position; and

WHEREAS, "banning the box" would demonstrate the City's intent to support applicants in their efforts to find employment; and

WHEREAS, the Mayor and City Commission desire to adopt the following Code amendments.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Division 3 of Article VI of Chapter 2 of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 2
ADMINISTRATION**

* * *

ARTICLE VI. – PROCUREMENT

* * *

DIVISION 3. – CONTRACT PROCEDURES

* * *

Section 2-376. Fair chance requirement for city contractors; waiver.

- (a) Fair chance requirement. Beginning on December 1, 2016, The the city shall not enter into a contract, resulting from a competitive solicitation issued pursuant to this article, with a business unless the business certifies in writing that the business has adopted and employs written policies, practices, and standards that are consistent with the city's Fair Chance Ordinance, set forth in article V of chapter 62 of this Code.
- (b) Waiver. The city commission, upon written recommendation of the city manager, may by resolution adopted by five-sevenths vote of the city commission waive the requirements of this section if the city commission finds such waiver to be in the best interest of the city, and provided such waiver is consistent with state and federal law.

SECTION 2. Article V of Chapter 62 of the Code of the City of Miami Beach is hereby created as follows:

**CHAPTER 62
HUMAN RELATIONS**

* * *

ARTICLE V. – FAIR CHANCE ORDINANCE

Section 62-200. – Legislative intent.

The employment of people with criminal records ensures healthier, safer communities, and reduces recidivism. The city hereby declares that it is in the interest of the health, safety, and welfare of the residents, visitors, and employees of Miami Beach to encourage the employment of individuals who have been previously arrested and/or convicted. People with criminal records suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for social service benefits.

Section 62-201. – Definitions.

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

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.

Section 62-202. – Consideration by the city of conviction history in employment.

- (a) The city shall not inquire about an applicant's criminal history and will not seek an applicant's authorization to conduct a criminal history background check unless and until the applicant is given a conditional offer of employment.
- (b) The city shall not advertise positions with a statement that an individual with a criminal record may not apply for the position or place on the application that a person with a criminal record may not apply, unless a criminal record would, pursuant to state or federal law, preclude the applicant from obtaining the position.
- (c) If, after making a conditional offer of employment to an applicant, the city, (i) in compliance with section 78-2 of this Code and state and federal law, conducts a criminal history background check, and (ii) determines that the applicant has been convicted of a crime, the city shall consider the following factors when determining whether the conviction disqualifies the applicant for the position:

 - (1) The nature and gravity of the offense or conduct;
 - (2) The time that has passed since the offense, conduct, and/or completion of the sentence;

- (3) The nature of the job held or sought; and
- (4) Whether, pursuant to state or federal law, the applicant's criminal record would preclude the applicant from obtaining the position.
- (d) The city shall not use or access the following records as a basis for declining to make an offer of employment or for withdrawing the conditional offer of employment:
 - (1) Records of arrest not followed by a valid conviction, as long as the criminal case is not currently pending;
 - (2) Sealed, dismissed, or expunged convictions;
 - (3) Misdemeanor convictions where no jail sentence can be imposed; and
 - (4) Non-criminal infractions.
- (e) If the city determines that the finalist's criminal history is cause for potential withdrawal of the conditional offer of employment, the finalist will be notified and given an opportunity to respond within five (5) business days of notification of cause for potential withdrawal.
- (f) If, after review of additional information submitted by the finalist, the city determines that the applicant's criminal history is disqualifying and a cause for withdrawal of a conditional offer of employment, the applicant will be provided with a written letter of rejection.
- (g) The city's selection and hiring decisions are final and are not subject to appeal.

Section 62-203. – Limiting provisions.

- (a) No individual provision of this article shall apply to the extent that any such provision conflicts with federal, state, or county law.
- (b) This article shall not apply to the hiring of building inspectors, code compliance officers, law enforcement officers, police complaint officers, police dispatchers, ~~or~~ fire fighters, or fire inspectors.
- (c) Nothing in this article requires the city to hire an applicant with a criminal record, nor limits the city's ability to select the most qualified applicant for a position.
- (d) Nothing in this article prohibits the city from denying employment based on a criminal conviction determined in accordance with the practices outlined in section 62-202 to be relevant to the position sought.
- (e) Nothing in this article creates a cause of action for any applicant with regard to hiring or selection for employment.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, subsection, clause, or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. EFFECTIVE DATE

This Ordinance shall take effect on the 21 day of May, 2016.

PASSED AND ADOPTED this 11 day of May, 2016.

ATTEST:

[Signature]
Rafael E. Granado
City Clerk

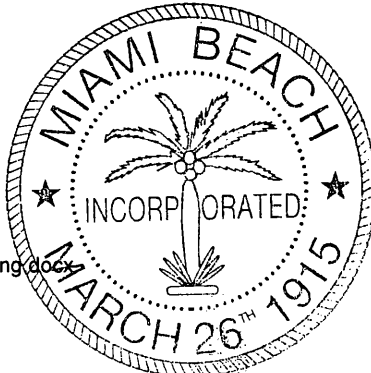
[Signature]
Philip Levine
Mayor

(Sponsored by Commissioner Michael Grieco)

Underline denotes additions
~~Strike through~~ denotes deletions
Double underline denotes additions after First Reading
~~Double strike through~~ denotes deletions after First Reading

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
[Signature] 5/12/16
City Attorney Date

NK



MIAMI BEACH

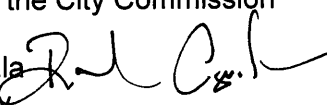
OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

To: Mayor Philip Levine
Members of the City Commission

Date: May 11, 2016

From: Raul J. Aguila
City Attorney



Subject: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION," ARTICLE VI, "PROCUREMENT," DIVISION 3, "CONTRACT PROCEDURES," BY CREATING SECTION 2-376, ENTITLED "FAIR CHANCE REQUIREMENT FOR CITY CONTRACTORS," AND AMENDING CHAPTER 62, "HUMAN RELATIONS," BY CREATING ARTICLE V, TO BE ENTITLED THE "FAIR CHANCE ORDINANCE," TO PROVIDE REGULATIONS REGARDING THE CONSIDERATION BY THE CITY AND BY CITY CONTRACTORS OF THE CRIMINAL HISTORY OF APPLICANTS FOR EMPLOYMENT, AND TO PROVIDE LIMITING PROVISIONS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

A. Introduction and Summary

Pursuant to the request of Commissioner Michael Grieco, the attached "Fair Chance" or "Ban the Box" Ordinance is submitted for consideration by the Mayor and City Commission. The Ordinance amends Chapter 62 of the City Code, entitled "Human Relations," and the City's Procurement Code, at Chapter 2, Article VI.

In summary, the proposed Fair Chance Ordinance would prohibit the City, as an employer, from inquiring about an applicant's criminal history until the applicant is given a conditional offer of employment. The City would also be prohibited from (i) advertising employment positions with a statement that an individual with a criminal record may not apply for the position, and (ii) placing a statement on an employment application that a person with a criminal record may not apply for the position.

Currently, the City does not conduct a criminal background check of applicants for employment, until an applicant is given a conditional offer of employment. Additionally, City employment applications do not inquire into an applicant's criminal history. To that extent, the Ordinance would codify what is already a City policy.

Agenda Item RSC
Date 5-11-16

B. Policy

People with criminal records suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits. The “[r]outine exclusion of people with criminal records from the workforce has drastic consequences for individuals, families, and the economy,” and “fuels poverty, recidivism, and ultimately poor health in vulnerable populations.”¹

“Ban the box” or “fair chance” policies and laws prohibit employers from asking questions about an applicant’s criminal history upon initial contact, and require employers to make individualized assessments about the relevance of a prior offense to the job. According to the National Employment Law Project, research indicates that “personal contact with an applicant reduces the negative effect of a criminal record on the employment decision.”²

For instance, a 2009 study conducted in New York City found “a significant effect of a criminal record on employment outcomes, and one that appears substantially larger for African Americans.”³ However, “[e]mployment prospects improve significantly for applicants who have a chance to interact with the hiring manager, and more so among those who elicit sympathetic responses in the course of those interactions.”⁴

In Florida, the following local governments have adopted “ban the box” policies: Miami-Dade County, Clearwater, Daytona Beach, Fort Myers, Gainesville, Jacksonville, Orlando, Pompano Beach, St. Petersburg, Tampa, and Tallahassee.

C. *Green* factors for considering arrest and conviction records in employment decisions

Under the proposed Ordinance, once the City gives an applicant a conditional offer of employment, the City, in compliance with Section 78-2 of the City Code, and state and federal law, shall conduct a criminal background check. If the City determines that the applicant has been convicted of a crime, the City shall consider the following factors when determining whether the conviction disqualifies the applicant for the position:

- (i) The nature and gravity of the offense or conduct;
- (ii) The time that has passed since the offense, conduct, and/or completion of the sentence;
- (iii) The nature of the job held or sought; and
- (iv) Whether, pursuant to state or federal law, the applicant’s criminal record would preclude the applicant from obtaining the position.

¹ Sonali Saluja & Henry Rosen, *Why public health practitioners should care about job prospects for people with criminal records: Employment challenges and successful prison and jail reentry*, 6 HARV. PUB. HEALTH REV. (July 2015).

² Fact Sheet: “Ban the Box” is a Fair Chance for Workers with Records, National Employment Law Project, March 2016, <http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-Fact-Sheet.pdf>.

³ Devah Pager, Bruce Western, & Naomi Sugie, *Sequencing disadvantage: Barriers to employment facing young black and white men with criminal records*, 623 ANNALS AM. ACAD. POL. & SOC. SCI. 195-213 (May 2009).

⁴ *Id.*

Factors (i) through (iii) are consistent with U.S. Equal Employment Opportunity Commission (“EEOC”) guidance regarding the consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964.⁵ These factors, known as the *Green* factors, were first identified by the U.S. Circuit Court of Appeal for the Eighth Circuit in *Green v. Missouri Pacific Railroad*. In *Green*, the Eighth Circuit held that it was discriminatory under Title VII for an employer to “follow[] the policy of disqualifying for employment any applicant with a conviction for any crime other than a minor traffic offense.” 523 F.2d 1290, 1293 (8th Cir. 1975). The court held that these factors should be applied to assess whether exclusion is job related for the position in question and consistent with business necessity.

Upon consideration of these factors, the City shall determine whether to withdraw the conditional offer of employment. If an offer is withdrawn, the finalist will be notified and given an opportunity to respond within five (5) business days. If, after reviewing the additional information, the City determines that the applicant’s criminal history is disqualifying and a cause for withdrawal of a conditional offer of employment, the applicant will be provided with a written letter of rejection. The City’s selection and hiring decisions are final and are not subject to appeal.

D. Prohibitions and limiting provisions

Pursuant to the proposed Ordinance, the City shall not use or access the following records as a basis for declining to make or for withdrawing an offer of employment:

- (i) Records of arrest not followed by a valid conviction, as long as the criminal case is not currently pending;
- (ii) Sealed, dismissed, or expunged convictions;
- (iii) Misdemeanor convictions where no jail sentence can be imposed; and
- (iv) Non-criminal infractions.

Additionally, the proposed Ordinance would not apply to the extent that any of its provisions conflict with federal, state, or county law. The Ordinance would also not apply to the hiring of building inspectors, code compliance officers, law enforcement officers, police complaint officers, police dispatchers, fire fighters, or fire inspectors.

E. Amendment to Procurement Code

The Ordinance amends the City’s Procurement Code to require that the City shall not enter into a contract, resulting from a competitive solicitation, with a business unless the business certifies in writing that the business has adopted and employs written policies, practices, and standards that are consistent with the City’s Fair Chance Ordinance. This requirement may be waived by 5/7ths vote of the City Commission.

⁵ Equal Employment Opportunity Commission, EEOC Enforcement Guidance No. 915.002, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (2012).

F. Economic Impact

Pursuant to Section 5.02 of the City Charter, the City "shall consider the long-term economic impact (at least 5 years) of proposed legislative actions." Based on the analysis of the Human Resources and Procurement Departments, this Ordinance will not have an economic impact on the City's resources.

RA/NK/sc

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MIAMI BEACH

CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARINGS MAY 11, 2016

NOTICE IS HEREBY given that public hearings will be held by the Mayor and City Commissioners of the City of Miami Beach, Florida, in the Commission Chamber, 3rd Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, May 11, 2016**, at the times listed, or as soon thereafter as the matter can be heard, to consider:

10:00 a.m.

A Resolution Adopting The Fourth Amendment To The General Fund, Enterprise Fund, Internal Service Fund And Special Revenue Fund Budgets For Fiscal Year (FY) 2015/16. *This Resolution is being heard pursuant to §166.041 F.S. Inquiries may be directed to the Budget & Performance Improvement Department at 305.673.7510.*

10:01 a.m.

A Resolution Adopting The Fifth Amendment To The Capital Budget For Fiscal Year (FY) 2015/16. *This Resolution is being heard pursuant to §166.041 F.S. Inquiries may be directed to the Budget & Performance Improvement Department at 305.673.7510.*

10:05 a.m.

An Ordinance Amending Subpart A - General Ordinances, Of The City Code, By Amending Chapter 54 "Floods" At Section 54-35, "Definitions," By Amending The Definitions For Base Flood Elevation, Crown Of Road, And Freeboard, And By Creating Definitions For Centerline Of Roadway, Critical Facility, Future Crown Of Road, Minimum Freeboard, Maximum Freeboard, Green Infrastructure, Low Impact Development (LID), And Surface Stormwater Shallow Conveyance; By Amending Section 54-45, "Permit Procedures," To Require A Stormwater Management Plan; By Amending Section 54-47, "General Standards," To Prohibit Septic Sewage Systems, And Include Requirements For Storage Of Hazardous Materials; By Amending Section 54-48, "Specific Standards," To Clarify The Minimum Elevation Of The Lowest Finished Floor For Residential And Non-Residential Construction, And Requiring A Minimum Elevation For Garage Entrances; By Amending Section 54-51, "Standards For Coastal High Hazard Areas (V-Zones)," To Clarify The Minimum Elevation Of The Lowest Floor Of All New Construction And Substantial Improvements; Providing Codification; Repealer; Severability; And An Effective Date. *This Ordinance is being heard pursuant to Section 2.05 of the City Charter and §166.041 F.S. Inquiries may be directed to the Planning Department at 305.673.7550.*

10:06 a.m.

An Ordinance Amending The City's Land Development Regulations. By Amending Chapter 114, "General Provisions," At Section 114-1, "Definitions," By Amending The Definitions For Grade, Future Adjusted Grade, And Building Height, And To Establish By Reference To Chapter 54-35 Definitions For Base Flood Elevation, Crown Of Road, Future Crown Of Road, Freeboard, Minimum Freeboard, Maximum Freeboard, Green Infrastructure, Future Adjusted Grade, And Surface Stormwater Shallow Conveyance; By Amending Chapter 142, "Zoning Districts And Regulations," Division 2, "RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts," By Amending And Clarifying The Maximum Elevation Within A Required Yard And Providing A Minimum Elevation Requirement For New Construction, And Amending How Maximum Building Height Is Calculated; Providing Codification; Repealer; Severability; And An Effective Date. *This Ordinance is being heard pursuant to Section 118-164 of the City's Land Development Code. Inquiries may be directed to the Planning Department at 305.673.7550.*

10:10 a.m.

An Ordinance Amending Chapter 118, Entitled "Administration And Review Procedures," Article I Entitled "In General" At Section 118-5, Entitled "Unity Of Title; Covenant In Lieu Thereof;" Chapter 114, Entitled "General Provisions," At Section 114-4, Entitled "Compliance With Regulations Required;" And Chapter 142, Entitled "Zoning Districts And Regulations," Article II Entitled "District Regulations," Division 1, Entitled "Generally," At Section 142-73, Entitled "Interpretation Of District Boundaries;" In Order To Clarify Procedures For The Movement Of FAR Within Unified Development Sites With Differing Zoning Districts; Providing For Enforcement And Penalties; And Providing For Repealer, Codification, Severability, And An Effective Date. *This Ordinance is being heard pursuant to Section 2.05 of the City Charter and §166.041 F.S. Inquiries may be directed to the Planning Department at 305.673.7550.*

10:15 a.m.

An Ordinance Amending Chapter 2 Of The Code Of The City Of Miami Beach, Entitled "Administration," Article VI, "Procurement," Division 3, "Contract Procedures," By Creating Section 2-376, Entitled "Fair Chance Requirement For City Contractors," And Amending Chapter 62, "Human Relations," By Creating Article V, To Be Entitled The "Fair Chance Ordinance," To Provide Regulations Regarding The Consideration By The City And By City Contractors Of The Criminal History Of Applicants For Employment, And To Provide Limiting Provisions; And Providing For Repealer, Severability, Codification, And An Effective Date. *This Ordinance is being heard pursuant to Section 2.05 of the City Charter and §166.041 F.S. Inquiries may be directed to the Office of the City Attorney at 305.673.7470; the Human Resources Department at 305.673.7524, and/or the Procurement Department at 305.673.7490.*

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. These items are available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

Rafael E. Granado, City Clerk
City of Miami Beach