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**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL 117796**

AN ORDINANCE seeking to increase public safety and job assistance through reducing criminal recidivism and enhancing positive reentries to society by prohibiting certain adverse employment actions against individuals who have been arrested, convicted, or charged with a crime; and adding Chapter 14.17 to the Seattle Municipal Code.

WHEREAS, the incarceration rate of the United States has tripled since 1980 and is nearly eight times its historic average; and

WHEREAS in 2011 there were 1,537,415 individuals serving sentences of more than one year in federal and state prisons; and

WHEREAS in addition to the increased incarceration rate, the PEW Center (PEW Center) on the States reports an increased number of individuals on probation and parole resulting in an astonishing 1 in 31 or 3.2% of the nation's population under criminal justice supervision in 2007; and

WHEREAS, from 1982 to 2007 in Washington State there has been a 101% increase in the incarceration rate of adults in jail and prison rising from .32% of adults or one in every 312 adults to .64% or one in every 155 adults; and

WHEREAS in 2011 in Washington State there were over 17,000 individuals in the state's 12 prison facilities and approximately 16,000 offenders under supervision in the community by the Department of Corrections; and

WHEREAS, in 2011 over 680,000 people were released from state and federal prisons including 7,600 people released from Washington State prisons; and

WHEREAS, the significant number of individuals incarcerated in federal and state prisons has resulted in a significant adult population in the United States that has a criminal conviction record; and

WHEREAS, it is in the interest of the entire community that persons reentering society after incarceration become productive members of society, and the ability of these persons to obtain employment is a major factor toward their productivity; and

WHEREAS, persons reentering society after incarceration often find that their criminal records prevent them from obtaining or even applying for employment; and

1 WHEREAS, the hiring standards that some employers use bar the employment of ex-offenders  
2 who present no risk in the specific employment setting; and

3 WHEREAS, persons who have paid their debts to society deserve a fair chance at employment;  
4 and

5 WHEREAS, the continued unemployment of ex-offenders interferes with their rehabilitation and  
6 contributes to criminal recidivism, and thus jeopardizes the safety of the entire  
7 community and increases the cost of the criminal justice system; and

8 WHEREAS, while African Americans are 3.8% of Washington's population they account for  
9 nearly 19% of the state's prison population and Native Americans who are 1.8% of the  
10 state population are 4.3% of the state's prison population; and

11 WHEREAS, these examples of large racial disparities in incarceration rates mean that blanket  
12 exclusions from employment based on any criminal history may have a disparate impact  
13 on racial minorities and damage minority racial communities; and

14 WHEREAS, the City Council believes that reducing adverse employment actions against persons  
15 with criminal records will help these persons reenter society and become productive  
16 citizens, make the community safer from recidivism and victimization, reduce racial  
17 disparities in criminal justice and community well-being, and reduce the cost of criminal  
18 justice and save tax dollars; and

19 WHEREAS, the state of Massachusetts and other states, the cities of Jacksonville, Florida and  
20 Chicago, Illinois and dozens of other municipalities have provided various job  
21 application protections for people with arrest or conviction records; and

22 WHEREAS, this ordinance does not and is not intended to conflict with State or federal law, and  
23 is a valid exercise of the City's police power pursuant to Article XI, section 11 of the  
24 Washington State Constitution.

25 NOW, THEREFORE,

26 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

27 Section 1. A new Chapter 14.17 of the Seattle Municipal Code is added as follows:

28 **14.17 The Use of Criminal History in Employment Decisions**

**14.17.010 Definitions**

For the purposes of this chapter

"Agency" shall mean the Seattle Office for Civil Rights.

1           “Arrest record” shall mean information indicating that a person has been apprehended,  
2 detained, taken into custody, held for investigation, or restrained by a law enforcement agency or  
3 military authority due to an accusation or suspicion that the person committed a crime.

4           “City” shall mean the City of Seattle.

5           “Charging party” means a person who files an Agency charge claiming he was aggrieved  
6 by an alleged violation of this chapter.

7           “Commission” means the Seattle Human Rights Commission.

8           “Conviction Record” and “Criminal History Record Information” is meant to be  
9 consistent with RCW 10.97 and means information regarding a final criminal adjudication or  
10 other criminal disposition adverse to the subject, including a verdict of guilty, a finding of guilty,  
11 or a plea of guilty or nolo contendere. A criminal conviction record does not include any prior  
12 conviction that has been the subject of an expungement, vacation of conviction, sealing of the  
13 court file, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on  
14 a finding of the rehabilitation of the person convicted, or a prior conviction that has been the  
15 subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It  
16 does include convictions for offenses for which the defendant received a deferred or suspended  
17 sentence, unless the adverse disposition has been vacated or expunged.

18           “Criminal background check” shall mean requesting or attempting to obtain, directly or  
19 through an agent, an individual’s Conviction Record or Criminal History Record Information  
20 from the Washington State Patrol or any other source that compiles and maintains such records  
21 or information.

22           “Director” means the Director of the Office for Civil Rights.

23           “Employee” shall mean any individual who performs any services for an employer,  
24 when the physical location of such services is in whole or in substantial part (at least 50% of the  
25 time) within the City. For purposes of this chapter, “employee” does not include an individual  
26 whose job duties or prospective job duties include law enforcement, policing, crime prevention,  
27 security, criminal justice, or private investigation services. In addition, “employee” does not  
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1 include an individual who will or may have unsupervised access to children under sixteen years  
2 of age, developmentally disabled persons, or vulnerable adults during the course of his or her  
3 employment.

4 "Employer" shall mean any person who has one or more employees, or the employer's  
5 designee or any person acting in the interest of such employer. For purposes of this chapter,  
6 "employer" includes job placement, referral, and employment agencies. "Employer" does not  
7 include any of the following:

- 8 1. The United States government;
- 9 2. The State of Washington, including any office, department, agency, authority,  
10 institution, association, society or other body of the state, including the legislature and the  
11 judiciary;
- 12 3. Any county or local government other than the City.

13 "Job applicant" shall mean any individual who applies or is otherwise a candidate to  
14 become an employee, as defined in this Chapter.

15 A "legitimate business reason" shall exist where, based on information known to the  
16 employer at the time the employment decision is made, the employer believes in good faith that  
17 the nature of the criminal conduct underlying the conviction or the pending criminal charge  
18 either:

- 19 1. Will have a negative impact on the employee's or applicant's fitness or ability to  
20 perform the position sought or held, or
- 21 2. Will harm or cause injury to people, property, or business assets,

22 and the employer has considered the following factors:

- 23 a. the seriousness of the underlying criminal conviction or pending criminal  
24 charge, and;
- 25 b. the number and types of convictions or pending criminal charges, and;
- 26 c. the time that has elapsed since the conviction or pending criminal charge,  
27 excluding periods of incarceration, and;
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1           d.     any verifiable information related to the individual’s rehabilitation or good  
2 conduct, provided by the individual and;

3           e.     the specific duties and responsibilities of the position sought or held, and;

4           f.     the place and manner in which the position will be performed.

5           “Pending criminal charge” means an existing accusation that an individual has  
6 committed a crime, lodged by a law enforcement agency or military authority through an  
7 indictment, information, complaint, or other formal charge, where the accusation has not yet  
8 resulted in a final judgment, acquittal, conviction, plea, dismissal, or withdrawal.

9           “Respondent” means any employer who is alleged or found to have committed a  
10 violation of this chapter.

11           “Tangible adverse employment action” means a decision by an employer to reject an  
12 otherwise qualified job applicant, or to discharge, suspend, discipline, demote, or deny a  
13 promotion to an employee.

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15           **14.17.020 Prohibited Use of Arrest and Conviction Records**

16           A. No employer shall advertise, publicize, or implement any policy or practice that  
17 automatically or categorically excludes all individuals with any arrest or conviction record from  
18 any employment position that will be performed in whole or in substantial part (at least 50% of  
19 the time) within the City.

20           B. An employer may perform a criminal background check on a job applicant or require a  
21 job applicant to provide criminal history information, but only after the employer has completed  
22 an initial screening of applications or resumes to eliminate unqualified applicants.

23           C. An arrest is not proof that a person has engaged in unlawful conduct. Employers shall  
24 not carry out a tangible adverse employment action solely based on an employee’s or applicant’s  
25 arrest record.

1 D. Employers may inquire about the conduct related to an arrest record. Employers shall  
2 not carry out a tangible adverse employment action solely based on the conduct relating to an  
3 arrest unless the employer has a legitimate business reason for taking such action.

4 E. Employers shall not carry out a tangible adverse employment action solely based on an  
5 employee's or applicant's criminal conviction record or pending criminal charge, unless the  
6 employer has a legitimate business reason for taking such action.

7 F. Before taking any tangible adverse employment action solely based on an applicant's  
8 or employee's criminal conviction record, the conduct relating to an arrest record, or pending  
9 criminal charge, the employer shall identify to the applicant or employee the record(s) or  
10 information on which they are relying and give the applicant or employee a reasonable  
11 opportunity to explain or correct that information.

12 G. Employers shall hold open a position for a minimum of two business days after  
13 notifying an applicant or employee that they will be making an adverse employment decision  
14 solely based on their criminal conviction record, the conduct relating to an arrest record, or  
15 pending charge in order to provide an applicant or employee a reasonable opportunity to  
16 respond, correct or explain that information. After two business days, employers may, but are  
17 not required, to hold open a position until a pending charge is resolved or adjudicated or  
18 questions about an applicant's criminal conviction history or conduct relating to an arrest are  
19 resolved.

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21 **14.17.030 Effect on Collective Bargaining Rights And Other Laws**

22 A. This chapter shall not be construed to interfere with, impede, or in any way diminish  
23 any provision in a collective bargaining agreement or the right of employees to bargain  
24 collectively with their employers through representatives of their own choosing concerning  
25 wages or standards or conditions of employment.

26 B. This chapter shall not be interpreted or applied to diminish or conflict with any  
27 requirements of state or federal law, including Title VII of the Civil Rights Act of 1964, the  
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1 federal Fair Credit Reporting Act, 15 U.S.C. 1681, as amended, the Washington State Fair Credit  
2 Reporting Act, RCW 19.182, as amended, the Washington State Criminal Records Privacy Act,  
3 RCW 10.97, as amended, and state laws regarding criminal background checks, including those  
4 related to individuals with access to children or vulnerable persons, RCW 43.43.830, *et seq.*, as  
5 amended. In the event of any conflict, state and federal requirements shall supersede the  
6 requirements of this chapter.

7 C. This chapter shall not be interpreted or applied as imposing an obligation on the part  
8 of an employer to provide accommodations or job modifications in order to facilitate the  
9 employment or continued employment of an applicant or employee with a conviction record or  
10 who is facing pending criminal charges, where such accommodations or job modifications are  
11 not otherwise provided to other individuals under applicable laws or employer policies or  
12 practices.

13 D. Nothing in this chapter shall be construed to discourage or prohibit an employer from  
14 adopting employment policies that are more generous to employees and job applicants than the  
15 requirements of this chapter.

16 E. This chapter shall not be construed to create a private civil right of action to seek  
17 damages or remedies of any kind.

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19 **14.17.040 Regulations**

20 A. The Agency shall be authorized to coordinate implementation and enforcement of this  
21 chapter and shall promulgate appropriate guidelines or regulations for such purposes.

22 The Agency shall convene a panel of stakeholders with a balance of perspectives,  
23 including members of the employer, social service, legal community and the Seattle  
24 Human Rights Commission to help develop the appropriate guidelines and regulations to  
25 implement this ordinance, and to oversee and provide input and feedback to the Director  
26 on the implementation of this ordinance for at least the first six months after the  
27 ordinance's effective date. Upon the written request of an employer, the Director has the  
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1 authority to extend the implementation date for that employer, for a reasonable amount of  
2 time, to provide the employer time to make the necessary changes to their employment  
3 systems or forms.

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5 B. The Agency will maintain data on the number of complaints filed pursuant to this  
6 chapter, demographic information on the complainants, the number of investigations it conducts  
7 and the disposition of every complaint and investigation. This data shall be submitted to the City  
8 Council every six months for the two years following the date this ordinance takes effect.

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10 **14.17.050 Exercise of Rights Protected; Retaliation Prohibited**

11 A. It shall be a violation for an employer or any other person to interfere with, restrain, or  
12 deny the exercise of, or the attempt to exercise, any right protected under this chapter.

13 B. It shall be a violation for an employer or any other person to retaliate against an  
14 employee or job applicant because the employee or applicant has exercised in good faith the  
15 right to file a complaint with the Agency about any employer's alleged violation of this chapter,  
16 the right to cooperate in the Agency's investigation, or the right to oppose any policy, practice,  
17 or act that is unlawful under this chapter.

18 C. The protections afforded under subsection 14.17.050.B shall apply to any person who  
19 mistakenly but in good faith alleges violations of this chapter.

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21 **14.17.060 Enforcement**

22 A. The same complaint, investigation, and enforcement procedures set forth in SMC  
23 14.16.080 apply under this chapter, except that when there is a determination that a respondent  
24 has violated this chapter, the exclusive remedy available under this chapter is a notice of  
25 infraction and offer of Agency assistance for the first violation; an order requiring the respondent  
26 to pay a monetary penalty of up to \$750, payable to the charging party, for the second violation;  
27 and a monetary penalty of up to \$1000, payable to the charging party, for each subsequent  
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1 violation. In the event the Hearing Examiner (or panel majority) determines that a respondent  
2 has committed a violation of this chapter, the Hearing Examiner (or panel majority) may order  
3 the respondent to pay the Agency's attorney's fees in addition to a monetary penalty. No other  
4 remedies, damages, or affirmative action may be ordered by the Agency, Commission, or  
5 Hearing Examiner.

6 B. The Agency has the authority to initiate investigation procedures on its own, without  
7 a complaint from a Charging Party, and enforcement procedures after a complaint has been  
8 received either from an applicant who feels unjustly treated, or from the applicant's  
9 representative, or when the Agency has reasonable cause based on substantial and verifiable  
10 information to believe that an employer has violated subsection SMC 14.17.020.A of this  
11 chapter.

12 **14.17.080 Effective Date**

13 This ordinance shall take effect on November 1, 2013.  
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Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2013, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Michael McGinn, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Legislative	Councilmember Bruce Harrell Patricia Lee 386-0078	

**Legislation Title:**

AN ORDINANCE seeking to increase public safety and job assistance through reducing criminal recidivism and enhancing positive reentries to society by prohibiting certain adverse employment actions against individuals who have been arrested, convicted, or charged with a crime; and adding Chapter 14.17 to the Seattle Municipal Code.

**Summary of the Legislation:** This legislation serves as a substitute for CB 117583 which was introduced and referred to the Council’s Public Safety, Civil Rights and Technology Committee on September 17, 2012.

This legislation recognizes and seeks to balance three equally important interests:

- The need and desire of individuals with a criminal history or conviction record to obtain employment,
- The public’s interest in reducing recidivism and increasing public safety, and
- An employer or business owner’s responsibility and interest in protecting their business operations, reputation, employees and customers as well as the public at large.

As outlined below this legislation bans employment practices that automatically exclude applicants with a criminal history or conviction record from consideration for employment, prescribes when and what criminal history can be considered in making employment decisions and the exclusive monetary penalty if the ordinance is violated.

**When can an employer perform a criminal background check?**

- Application forms, advertisements, employment practices and processes can not automatically or categorically exclude all individuals with any arrest or conviction record from consideration for a job that will be performed in whole or in part, at least 50% of the time, in the City of Seattle.
- An employer may perform a criminal background check or request that information from a job applicant after an employer completes an initial screening of applicants or resumes to eliminate unqualified applicants.



**State and Federal requirements and collective bargaining agreement provisions remain the same.**

- State and Federal requirements such as the Title VII of the 1964 Civil Rights Act as amended, the Washington State Fair Credit Reporting Act, RCW 19.182 as amended, the Washington State Criminal Records Privacy Act or state laws regarding criminal background checks including those related to individuals with access to children or vulnerable persons, or law enforcement are not changed or diminished. In the event of a conflict, state and federal requirement shall supersede the requirements of this chapter.

**What and how can an individual's criminal history can be considered?**

The term "tangible adverse employment action" is used to describe an employer's decision not to hire an otherwise qualified applicant, or to fire, suspend, discipline, demote or deny a promotion to an employee.

- Arrest. An arrest is not proof a person has engaged in unlawful conduct. An employer may not base a tangible adverse employment decision on the fact of an arrest but may inquire about the conduct relating to the arrest. Employers may not carry out a tangible adverse employment action solely based on the conduct relating to an arrest unless the employer has a legitimate business reason, defined below, for taking such action.
- Convictions and pending convictions. Employers can not take an adverse employment action solely based on an employee or applicant's conviction or pending conviction record unless the employer has a legitimate business reason for taking such action.

A legitimate business reason is defined as

A "legitimate business reason" shall exist where, based on information known to the employer at the time the employment decision is made, the employer believes in good faith that the nature of the criminal conduct underlying the conviction or the pending criminal charge either:

- (1) Will have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held, or
- (2) Will harm or cause injury to people, property, or business assets, and the employer has considered the following factors:
  - a. the seriousness of the underlying criminal conviction or pending criminal charge, and;
  - b. the number and types of convictions or pending criminal charges, and;
  - c. the time that has elapsed since the conviction or pending criminal charge, excluding periods of incarceration, and;
  - d. any verifiable information related to the individual's rehabilitation or good conduct, and;
  - e. the specific duties and responsibilities of the position sought or held, and;
  - f. the place and manner in which the position will be performed.



Before taking a tangible adverse employment action solely based on an employee's or applicant's criminal conviction record, pending criminal charge or conduct relating to an arrest record, the employer shall identify the record(s) or information they are relying on and give the applicant or employee a reasonable opportunity, two business days, to explain or correct that information. Employers may, but are not required to, hold open a position beyond that to resolve questions or issues about an individual's criminal conviction record.

### **Remedy**

- This ordinance does not create a private cause of action.
- The exclusive remedy for a violation of these requirements is a notice of infraction and offer of assistance from the Seattle Office for Civil Rights (SOCR) for the first violation, a monetary penalty capped at \$750 for the second offense and a monetary penalty capped at \$1000 for a subsequent offense. SOCR's attorney's fees may be awarded.
- Similar to the authority the SOCR Director has under the Unfair Employment Practices section of the Seattle Municipal Code, the SOCR Director has the authority to initiate investigation and enforcement procedures when SOCR has reason to believe an employer has violated these provisions.

### **Implementation and Oversight**

SOCR will convene a panel of stakeholders including members of the employer, social service, legal community and the Seattle Human Rights Commission to help develop the appropriate guidelines and regulations to implement this ordinance.

SOCR will maintain data on the number of complaints filed, demographic information on the complainants, the number of investigations it conducts and the disposition of every complaint and investigation and submit this data to the City council every six months for the two years following the effective date of this ordinance.

### **Background:**

Employment is a key factor in helping individuals with a previous criminal history re-establish themselves as productive members of society. However, individuals often find that their criminal records prevent them from obtaining or even applying for employment. Continued unemployment interferes with their rehabilitation and contributes to criminal recidivism and thus jeopardizes the safety of the entire community and increases the cost of the criminal justice system.

In 2011 in Washington State there were over 17,000 individuals in the state's 12 prison facilities and over 16,000 offenders in the community under the supervision of the Department of corrections. There are also large racial disparities in the incarceration rates with the result that employment practices that exclude employment opportunities because of criminal history may have a disparate impact on certain racial groups.

Employers also have a well founded interest in providing a safe environment for their employees and customers and protecting their business assets. However, hiring standards may exclude from



consideration or hiring individuals who present no risk in the specific employment setting.

The City of Seattle, and State of Washington, as well as other jurisdictions, already provide restrictions on the use of criminal background history in employment decisions.

X **This legislation does not have any financial implications.**

**Other Implications:**

a) **Does the legislation have indirect financial implications, or long-term implications?**  
Seattle's Office for Civil Rights will develop Director's Rules and will implement this ordinance which will add to the responsibilities of existing staff.

b) **What is the financial cost of not implementing the legislation?** The intended goal of this ordinance is to provide employment opportunities to ex-offenders thereby reducing criminal recidivism and public safety costs.

c) **Does this legislation affect any departments besides the originating department?**

Seattle Office for Civil Rights, Hearing Examiner

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

e) **Is a public hearing required for this legislation?**

No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No

g) **Does this legislation affect a piece of property?**

No.

h) **Other Issues:**

**List attachments to the fiscal note below:**

None