

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

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 amending Sections 14.04.030 and 14.04.040 of the Seattle Municipal Code.

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

WHEREAS, in the last two decades in Washington State, as in the United States generally, the number of persons incarcerated in jail and prison has increased dramatically, and as a result the number of persons reentering society after incarceration also is increasing; and

WHEREAS, in 2009 over 17,000 people were released from prisons in Washington State and nearly 730,000 people were released from federal and state prisons across the country; 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 key to their productivity; and

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

WHEREAS, employers sometimes have a reasonable basis for not hiring someone with a specific criminal record, but often the hiring standards that employers use bar the employment of ex-offenders who present no risk in the specific employment setting; and

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

WHEREAS, the continued unemployment of ex-offenders 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; and

1 WHEREAS, while African Americans are 3.6% of Washington’s population they account for
2 nearly 19% of the state’s prison population and Native Americans who are 1.5% of the
3 state population are 4.3% of the state’s prison population; and

4 WHEREAS, these large racial disparities in incarceration rates mean that blanket exclusions
5 from employment based on any criminal history may have a disparate impact on racial
6 minorities and damage minority racial communities; and

7 WHEREAS, the City Council believes that prohibiting unreasonable employment actions against
8 persons with criminal records will help these persons reenter society and become
9 productive citizens, make the community safer from recidivism and victimization, reduce
10 racial disparities in criminal justice and community well-being, and reduce the cost of
11 criminal justice and save tax dollars; and

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

15 WHEREAS, this ordinance does not and is not intended to conflict with State law, and is a valid
16 exercise of the City’s police power pursuant to Art. 11, s 11 of the Washington State
17 Constitution.

18 NOW, THEREFORE,

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

20 Section 1. Section 14.04.030 of the Seattle Municipal Code is amended as follows:

21 SMC 14.04.030

22 Definitions.

23 When used in this chapter, unless the context otherwise requires:

24 . . .

25 Y. “Arrest record” means information indicating that a person has been questioned,
26 apprehended, detained, taken into custody, held for investigation, or restrained by a law
27 enforcement agency or military authority due to an accusation or suspicion that the person
28 committed a crime.

1 Z. “Criminal conviction record” means information regarding a final criminal
2 adjudication or other criminal disposition adverse to the subject, including a verdict of guilty, a
3 finding of guilty, or a plea of guilty or nolo contendere. A criminal conviction record does not
4 include any prior conviction that has been the subject of an expungement, pardon, annulment,
5 certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation
6 of the person convicted, or a prior conviction that has been the subject of a pardon, annulment, or
7 other equivalent procedure based on a finding of innocence. It does include convictions for
8 offenses for which the defendant received a deferred or suspended sentence, unless the record
9 has been expunged according to law.

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

14 BB. A “direct relationship” exists where the nature of the criminal conduct underlying the
15 conviction or the pending criminal charge has a direct bearing or connection to the employee’s or
16 applicant’s fitness or ability to perform the position sought or held; or where it is reasonably
17 foreseeable that employing the applicant or employee will result in harm or injury to persons or
18 property. In determining direct relationship, employers should consider factors such as the
19 seriousness of the underlying criminal conviction or pending criminal charge; the number and
20 types of convictions or pending criminal charges; how much time has elapsed since the
21 conviction or pending criminal charge, excluding periods of incarceration; any verifiable
22 information related to the individual’s rehabilitation or good conduct; the specific duties and
23 responsibilities of the position sought or held; and the employer’s legitimate interest in
24 protecting people, property, and its business reputation.

1 Section 2. Section 14.04.040 of the Seattle Municipal Code is amended as follows:

2 Unfair employment practices, designated.

3 It is unfair employment practice within the City for any:

4 ...

5 J. Employer to engage in the following prohibited employment practices by reason of an
6 applicant's or employee's record of arrests or criminal convictions or pending criminal charges.

7 1. No employer shall discharge, refuse to hire, or carry out a tangible adverse
8 employment action because of

9 a) an employee's or applicant's arrest record; or

10 b) an employee's or applicant's criminal conviction record, unless there is a direct
11 relationship between the conviction record and the employment sought or held; or

12 c) a pending criminal charge against an applicant or employee, unless there is a direct
13 relationship between the circumstances of the pending criminal charge and the employment
14 sought or held.

15 2. No employer shall obtain or consider information about an applicant's arrest or
16 criminal conviction record or pending criminal charge, or request a job applicant to supply such
17 information, until after the employer has given the applicant a conditional offer of employment.

18 3. Nothing in this chapter shall be construed to diminish or conflict with the requirements
19 of the Fair Credit Reporting Act, RCW 19.182 et seq.

20 4. Nothing in this chapter requires an employer to provide accommodations or job
21 modifications in order to facilitate the employment or continued employment of an applicant or
22 employee with a criminal conviction record or who is facing pending criminal charges, where
23 such accommodations or job modifications are not otherwise provided to non-disabled
24 individuals under applicable law or employer policies or practices.

25 5. Subsections (J)(1) and (J)(2) above shall not apply to any employer who:

1 a) Provides services to, houses, has access to, or otherwise cares for any person who is
2 under the age of eighteen, who is under the age of twenty-one and has been sentenced to a term
3 of confinement under the supervision of the state department of social and health services under
4 chapter 13.40 RCW, who is a vulnerable adult under chapter 74.34 RCW, or who is a vulnerable
5 person as defined in RCW 9.96A.060;

6 b) Provides law enforcement, policing, crime prevention, security, or private investigator
7 services; or

8 c) Is expressly permitted or required under any federal or state law to inquire into,
9 consider, or rely on information about an applicant's or employee's arrest or criminal conviction
10 record or pending criminal charges for employment purposes, or

11 6. Notwithstanding any provision of Sections 14.04.030 and 14.04.040, it is not an unfair
12 employment practice for an employer to disqualify an applicant or employee whose criminal
13 conviction record includes a conviction for, or who is under pending criminal charges for,
14 embezzlement, theft, fraud, or any other financial crime from employment in a position
15 involving access to money, financial information, or personal identifying information of
16 customers, employees, or members of the public.

17 Section 4. This ordinance shall take effect and be in force 30 days after its approval by
18 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
19 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

1 Passed by the City Council the ____ day of _____, 2012, and
2 signed by me in open session in authentication of its passage this
3 ____ day of _____, 2012.

4 _____
5 _____
6 President _____ of the City Council

7
8 Approved by me this ____ day of _____, 2012.

9 _____
10 _____
11 Michael McGinn, Mayor

12
13 Filed by me this ____ day of _____, 2012.

14 _____
15 _____
16 Monica Martinez Simmons, City Clerk

17 (Seal)