



Legislation Text

File #: 14-0769, Version: 1

ORDINANCE REPEALING ORDINANCE 6PSF-f SEPTEMBER 19, 2012, “ORDINANCE TO ASSIST THE SUCCESSFUL REINTEGRATION OF FORMERLY INCARCERATED PEOPLE INTO THE COMMUNITY BY REMOVING BARRIERS TO GAINFUL EMPLOYMENT AND STABLE HOUSING AFTER THEIR RELEASE FROM PRISON; AND TO ENHANCE THE HEALTH AND SECURITY OF THE COMMUNITY BY ASSISTING PEOPLE WITH CRIMINAL CONVICTIONS IN REINTEGRATING INTO THE COMMUNITY AND PROVIDING FOR THEIR FAMILIES, AND REPLACING BY “ORDINANCE TO ASSIST THE SUCCESSFUL REINTEGRATION OF FORMERLY INCARCERATED PEOPLE INTO THE COMMUNITY BY REMOVING BARRIERS TO GAINFUL EMPLOYMENT AND STABLE HOUSING AFTER THEIR RELEASE FROM PRISON, AND TO ENHANCE THE HEALTH AND SECURITY OF THE COMMUNITY AND PROVIDING FOR THEIR FAMILIES. (BAN THE BOX ORDINANCE)

Sponsor: Rice

No Action Taken, June 18, 2014

Tabled 6F-b 062414

I. Findings and Purpose.

WHEREAS, 65 million Americans--that is, 1 in 4 adults--have a criminal record; and

WHEREAS, Newark, the largest city in the State of New Jersey, with a population of more than 280,000, reportedly has the highest per capita number of parolees of any U.S. city; and

WHEREAS, in 2010, Newark was 52.4% Black, 33.8% Latino, and 11.6% Non-Hispanic White; and

WHEREAS, an arrest, without any conviction, can serve as a barrier to employment and housing, resulting in punishment of the innocent; and

WHEREAS, more than 1,700 individuals return to Newark from state prison annually and an additional 1,400 Newark residents are released from the Essex County Correctional Facility every month; and

WHEREAS, similar to many urban jurisdictions, more than 6,500 Newark residents are under Federal Probation, State Parole or County Probation at any given time; and

WHEREAS, 3,885 Essex County residents were in New Jersey Department of Corrections custody in 2010, representing sixteen percent of the total incarcerated population; and

WHEREAS, many more Newark and Essex County residents who are or have been involved in the criminal justice system have been sentenced to probation and were never incarcerated; and

WHEREAS, formerly incarcerated men with a criminal record can expect to lose \$100,000 in income across their prime earning years; and

WHEREAS, the American Bar Association identified over 38,000 statutes imposing collateral consequences on individuals with a criminal record, many which de-incentivize work and responsibility that promote public safety; and

WHEREAS, a recent report on these collateral barriers ranked New Jersey as the 44th worst State, meaning it had more statutes creating collateral consequences than all but six States; and

WHEREAS, 95% of people admitted to prison eventually return to their communities of origin; and

WHEREAS, an estimated 62% of those returning to Newark will be re-arrested, re-convicted, or re-incarcerated within three years of their release; and

WHEREAS, as of 2008, Blacks, Latinos and Whites made up, respectively, 39.2%, 33.3%, 20.6% of the prison population; and

WHEREAS, two-thirds of people returning to their communities from prison are racial minorities, compared to one third of the general population; and

WHEREAS, criminal background checks by employers have increased dramatically in recent years, with estimates of ninety percent of large employers in the U.S. now conducting background checks as part of the hiring process; and

WHEREAS, commercially run criminal background checks commonly contain errors and inaccuracies and even FBI background checks are out of date fifty percent of the time; and

WHEREAS, as of March 2012, the overall unemployment rate in Newark was 14.5%. Nationally, in April 2012 the overall unemployment rate was 8.1%. The unemployment rate for Blacks was 13%; and

WHEREAS, barriers to employment and housing based on criminal records disproportionately

affect racial and ethnic minorities; and

WHEREAS, many individuals with criminal records represent a group of job seekers, ready to compete for employment and contribute to society; and

WHEREAS, finding and securing adequate housing is one of the most difficult re-entry challenges faced by formerly incarcerated persons; and

WHEREAS, the need for housing is both immediate and long-term; it begins immediately upon release from prison when individuals turn to temporary housing options, and becomes more urgent as formerly incarcerated individuals seek a suitable long-term housing option; and

WHEREAS, individuals with access to stable housing are less likely to be re-incarcerated than prisoners with no place to go upon release; and

WHEREAS, homelessness is prevalent among people released from prison and jail. One-tenth of individuals entering prisons have recently been homeless; at least as many of those who leave prisons also end up homeless; and

WHEREAS, access to stable housing options--public housing, affordable housing, private rental housing, and transitional and supportive housing--is limited or unavailable to formerly incarcerated persons; and

WHEREAS, federal and local housing authorities' laws regarding eligibility for public housing frequently exclude the formerly incarcerated from federally subsidized housing; and

WHEREAS, even without restrictions on eligibility for public housing assistance, federally subsidized housing is unlikely to meet the immediate or long-term needs of the formerly incarcerated. Studies estimate that only one-third of all eligible individuals and families actually gain access to public housing units or housing choice vouchers. In Newark, the waiting period for the Housing Choice Voucher Program is exceptionally long--10 years; and

WHEREAS, affordable housing is scarce, and former prisoners often return to communities with more severe shortages of affordable housing. This is a major obstacle, as individuals released from prison and jail have difficulty finding and maintaining employment, and because of limited work histories, will likely end up with jobs that provide low incomes; and

WHEREAS, private-market rental housing is closed to many individuals transitioning from prison or jail because landlords are unwilling to rent to people with criminal records, whether for arrest or conviction; and

WHEREAS, persons with criminal records are not a protected class and are therefore susceptible to wide ranging discrimination based on their criminal record when seeking housing, irrespective of the severity of their crime, the time elapsed since committing the crime or evidence of rehabilitation; and

WHEREAS, screening tenants for apartments based on criminal records disproportionately affects racial and ethnic minorities, which could provide evidence of numerous violations of Title VIII based on disparate impact; and

WHEREAS, the Supreme Court's ruling in *Alexander v. Sandoval* strips individuals of the right to pursue a private cause of action for disparate impact and since there has been a lack of disparate impact litigation brought forth by federal agencies, these persons have no recourse to bring Title VIII claims; and

WHEREAS, landlords routinely conduct criminal background checks for apartment applicants, and those with criminal histories are the most likely to be rejected; and

WHEREAS, returning prisoners must overcome many barriers to access rental housing in the private market, including affordability, stigma of criminal history, unwillingness of landlords to consider them for tenancy, and community objection due to public safety concerns, whether well founded or not; and

WHEREAS, securing employment and stable housing significantly reduces the risk of recidivism; and

WHEREAS, the removal of obstacles to employment and housing for people with prior convictions increases public health and safety by providing economic and social opportunities to a large group of people living in Newark; and

WHEREAS, the costs to New Jersey citizens and the people of New Jersey in terms of incarceration tops out at an estimated \$48,000.00 per year; and

WHEREAS, the cycle of arrest, incarceration and recidivism is detrimental to the community, contributing to unemployment and family destabilization, and disrupting the economic and social fabric of communities; and

WHEREAS, it is the intent and purpose of this law to assist the successful reintegration of formerly incarcerated people into the community by removing barriers to gainful employment and stable housing after their release from prison; and

WHEREAS, at the time of this Article’s passage, at least 30 cities, counties, and states have passed ordinances and statutes or enacted policies to remove barriers to the employment of those with criminal histories by public and private employers; and

WHEREAS, it is the intent and purpose of this law to enhance the health and security of the community by assisting people with criminal convictions in reintegrating into the community and providing for their families; and

WHEREAS, at the time of this statute’s passage, at least six of New Jersey’s sixteen largest employers have implemented their own company-wide policies removing barriers to the employment of those with criminal histories; and

WHEREAS, at the time of this statute’s passage, the nation’s largest public employer, the United States Federal Government, has implemented its own policies removing barriers to the employment of those with criminal histories.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Note: Additions are shown as bold and underlined. Deletions are shown as strikethroughs.

Section 1. Ordinance 6PSF-f September 19, 2012 is hereby repealed in its entirety:

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Article One - Employment

I. Definitions. As used in this Article,

- a. “Advertisement” shall mean any circulation, mailing, posting, or any other form of publication, utilizing any media, promoting the employer or intending to alert its audience, regardless of size, to the availability of any position of employment.
- b. “Application process” shall mean the period beginning when the candidate inquires about the employment being sought and ending when an employer has extended a conditional offer of employment to the candidate.
- c. “Candidate” shall mean any person whom an employer considers when identifying potential employees, through any means, including, but not limited to, recruitment, solicitation, or seeking personal information, or any person who requests to be considered for employment by an employer, or who requests information from an employer related to seeking employment. **For the purposes of this statute,**

“candidate” includes persons who are already employees of the employer.

- d. “Conviction” shall mean any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of unconditional discharge.
- e. “Employer” shall mean any person, company, corporation, firm, labor organization, or association which has five (5) or more employees and does business, employs persons, or takes applications for employment within the City of Newark, including the City of Newark and any City department, agency, board, or commission, or any employee or agent thereof. “Employer,” for the purposes of this article, includes job placement and referral agencies and other employment agencies. “Employer” shall not, for the purposes of this Article, include the State or any of its political subdivisions or the United States or any of its political subdivisions.
- f. “Employment” shall mean any occupation, vocation, job, work, or employment with or without 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. For the purposes of this Article, the physical location of the prospective employment must be in whole or substantial part, within the City of Newark.
- g. **“Filled the position” shall mean an offer of employment has been both extended and accepted.**
- g. h. “Inquiry” shall mean any direct or indirect conduct intended to gather information from or about applicant, candidate or employee, using any mode of communication, including but not limited to application forms, interviews, and criminal history checks.
- ~~h.~~ i. “Otherwise qualified” shall mean any candidate who meets all other criteria for a position or consideration for a position.
- ~~i.~~ j. “Pre-application inquiry” shall mean any **inquiry in connection with any decision regarding employment** that precedes the application process, including, but not limited to, ~~in connection with any decision regarding employment,~~ any recruitment of candidates, attempts to identify candidates, or solicitation of candidates.
- j k. A “Type 1 violation” is either an initial violation of this Article or a violation that is not preceded by another violation within the previous three years. All actions within the Application Process for the same position shall together be considered a single Type 1 violation, notwithstanding that each would otherwise constitute a violation on its own.
- k l. A “Type 2 violation” is any violation of this Article that is preceded by another violation within the previous three years. Each action that would constitute a Type 2 violation of this Article shall be a separate Type 2 violation.

III II. **Criminal History Inquiry Practices.** In connection with any decision regarding employment,

- a. An employer shall not conduct any pre-application criminal history inquiry regarding any

person, **including but not limited to any inquiry for those convictions outlined in Section III(c) of this Article.**

- b. **Inquiry into and consideration of the criminal history of any candidate may take place only after the candidate has been found otherwise qualified and received a conditional offer of employment.** An employer shall not **make any inquiry regarding a candidate's criminal history during the application process** ~~conduct a criminal history inquiry regarding a candidate unless the employer has made a good faith determination that the relevant position is of such sensitivity that a criminal history inquiry is warranted.~~
- ~~c. Inquiry into and consideration of the criminal history of a candidate may take place after the candidate has been found otherwise qualified and received a conditional offer of employment. An employer shall not make any inquiry regarding a candidate's criminal history during the application process.~~
- d. **c.** Notwithstanding the foregoing, if the candidate **or employee** voluntarily discloses any information regarding his or her criminal history by unsolicited voluntary written or oral disclosure, the employer may discuss the criminal history disclosed.
- e. **d.** **Any information obtained regarding an applicant's criminal history, whether obtained through an inquiry or by any means other than voluntary disclosure as described in Section II(c) herein, shall not be considered in making an employment determination until after a conditional offer has been made.** Any information obtained not as the result of an inquiry or a voluntary disclosure, according to subsection (d), supra, shall not be used for any purpose in an employment determination.
- f. **e.** Prior to conducting any criminal history inquiry about a candidate or employee, the employer shall provide standard written notification:
- i. Advising that, upon the written consent of the candidate or employee, the employer will conduct a criminal history inquiry; and
 - ii. Attaching a copy of the Information Form Regarding Criminal Record Review - Employment, attached hereto as Appendix A.**
 - ~~ii. Advising that, following any adverse decision by the employer regarding employment, the candidate or employee will have the right and opportunity to present evidence as required by Section VII, infra, and describing the kinds of evidence that may be presented; and~~
- ~~Attaching a copy of the following stat~~

IV. III. Scope of Inquiry. In connection with any decision regarding employment,

- a. Subject to the terms of this Article, an employer shall be permitted to ~~inquiry about~~ consider
- i. Indictable offense convictions in New Jersey (or, if from any other State or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute an indictable offense) for eight (8) years following the release from post-conviction custody or from the date of sentencing if the person was not incarcerated sentencing thereof, including termination of any period of incarceration;
 - ii. Disorderly persons convictions or municipal ordinance violations in New Jersey (or, if from any other State or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute a disorderly persons offense or municipal ordinance violation) for five (5) years following the release from post-conviction custody or from the date of sentencing if the person was not incarcerated; and ~~he~~ sentencing thereof, including termination of any period of incarceration; and
 - iii. Pending criminal charges, ~~which shall include cases that have been continued without a finding until such time as the case is dismissed.~~
- b.** Notwithstanding Section II(a) herein, all prior disorderly persons convictions, indictable offenses, and municipal ordinance violations (or, if from any other state or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute a disorderly persons conviction, indictable offense, or municipal ordinance violation) may be considered by the employer if any of the subject's convictions may be considered pursuant to subsections (a) or (c) of this section, unless they are deemed impermissible pursuant to Section III(d) herein. Notwithstanding subsection (a), supra, prior disorderly persons and indictable offense conviction records shall be available for the entire period that the subject's last available conviction record is available under subsection (a).
- c.** Notwithstanding ~~subsection (a)~~ Section II(a) herein and subject to the terms of this Article, an employer shall be permitted to ~~inquire about~~ consider convictions for murder, attempted murder, arson-related offenses, and sex offenses requiring registry under N.J.S.A. Title 2C, Chapter 7, that are punishable by a term of incarceration in State prison regardless of the length of time that has passed since the disposition thereof, (or in any other State or jurisdiction, convictions for conduct which, if committed in New Jersey, would require registry under N.J.S.A. Title 2C, Chapter 7), and any crime listed in 18 U.S.C. Chapter 113B - Terrorism or N.J.S.A. 2C:38 - 2, et seq. , September 11th, 2001, Anti-Terrorism Act (or, if from any other State or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute a violation of N.J.S.A. 2C:38-2, et seq.), regardless of when they

occurred.

- d. It shall not be permissible for an employer to consider when making an employment decision, require any candidate or employee to disclose or reveal, or to take any adverse action against any candidate or employee on the basis of:**

~~It shall not be permissible for an employer to conduct any inquiry about, require any candidate or employee to disclose or reveal, or to take any adverse action against any candidate or employee on the basis of~~

- i. any arrest or criminal accusation made against the candidate or employee, which is not then pending against that person or ~~and~~ which did not result in a conviction;
- ii. any records which have been erased, expunged, the subject of an executive pardon, or otherwise legally nullified; and
- iii. any juvenile adjudications of delinquency or any records which have been sealed.

~~∇~~ **IV. Required Considerations.** In connection with any decision regarding employment,

a. An employer shall consider collectively, in reasonably the following factors ~~in~~ evaluating the candidate or employee and the results of any criminal history inquiry, conducted in accordance with ~~the limitations of Section IV~~ III of this Article, factors including but not limited to:

- ~~i. The nature of the crime and its relationship to the duties of the position sought or held;~~
 - ii. Any information if provided, pertaining to the degree of rehabilitation and good conduct, or to the accuracy of the criminal record in question produced by the candidate or employee, or produced on his or behalf to the employer, including but not limited to any certificate of rehabilitation issued by any State or Federal agency, which includes but is not limited to certificates issued pursuant to N.J.S.A. 2A:168A-7; ~~including any information produced by the candidate or employee, or produced on his or her behalf;~~
- iii. ~~Does the prospective job provide an opportunity for the commission of a similar offense(s);~~

ii. The amount of time that has passed since the conviction(s) and/or release from custody;

iii. The nature of and circumstances surrounding the crime(s); and

iv. The nature and duties of the job held or sought.

~~iv. Are the circumstances leading to the offense(s) likely to reoccur?~~

~~v. How much time has elapsed since the offense(s) and how did you factor that~~

into the employment decision?; and
vi. Any certificate of rehabilitation issued by any state or federal agency,
including but not limited to certificates issued pursuant to N.J.S.A. 2A:168A-7.

b. An employer shall document in writing its reasonable consideration of the factors set forth in Section IV a herein by completing the Criminal Record Consideration Form, attached hereto as Appendix D.

~~An employer shall document in writing its consideration of the factors in subsection (a), supra.~~

- ~~i. An employer shall use the Applicant Criminal Record Consideration form, which specifies how an employer should document the decision to revoke a conditional offer.~~
- ~~ii. An applicant who has a conditional offer revoked subsequent to a criminal record inquiry must be provided with a copy of the Applicant Criminal Record Consideration form.~~

Vf. Notice. In connection with any decision regarding employment,

- a. If after conducting a criminal history inquiry the employer makes an adverse employment decision, including, but not limited to, the ~~refusal, rescission, or revocation~~ of the **conditional** offer of **employment** a position with the employer, or termination of employment, the employer **shall** must within a reasonable period of time:

- i. notify the candidate or employee in writing of the adverse employment decision and of where any additional information and/or evidence may be submitted pursuant to Section VII herein;** ~~notify the candidate or employee of the adverse employment decision;~~
- ii. provide the candidate or employee with the results of the criminal history inquiry and a copy of the Criminal Record Consideration Form completed pursuant to Section IV(b);** ~~provide the candidate or employee with a photo copy of the results of the criminal history inquiry, indicating the particular conviction(s) that relate(s) to the position's responsibilities and a copy of the Applicant Criminal Record Consideration form;~~
- iii. Provide the candidate with an additional copy of the Information Form Regarding Criminal Record Review - Employment, attached hereto as Appendix A.**
~~provide the candidate or employee with a written notice of rejection, specifically stating the reasons for the adverse decision and including the employer's~~

~~consideration of the factors required under Section V, supra; and
iv. advise the candidate or employee of the opportunity for review under
Section VII, infra, including how the candidate or employee may present evidence
related to the employer's consideration of the factors required under Section V,
supra, and what kinds of evidence that may be presented.~~

b. A copy of all **forms and** notices required under Subsection **V** (a), **herein** supra , shall be sent in one package by registered mail to the candidate or employee.

VI. Opportunity for Review. In connection with any decision regarding **adverse** employment **decision**,

a. **The candidate or employee may, within ten (10) business days after receipt of the documents required under Section IV herein, provide additional information and/or evidence to the employer related to the accuracy and/or relevance of the results of the criminal history inquiry, including information pertaining to any of the factors listed in Section V herein. An employer may hold the position open but is not required do so pending receipt of any such information and/or evidence.** ~~The candidate or employee shall have ten (10) business days after receipt of the notices required under Section VI, supra, to respond to the employer regarding the results of the criminal history inquiry. The employer shall provide the candidate or employee with an opportunity to present information and evidence related to the accuracy and/or relevance of the results of the criminal history inquiry, including information pertaining to any of the factors listed in Section V(a), supra. The employer must review all information and documentation received from the candidate or employee prior to taking any final decision regarding employment.~~

b. **If any information and/or evidence is submitted pursuant to Section VI(a) herein, the employer must, within a reasonable period of time, notify the candidate or employee of its final decision .** ~~An employer shall document in writing the information and evidence provided under subsection (a), supra, the employer's consideration of this information and evidence, and the employer's final action, specifically stating the reasons for the final action taken. The employer must, within a reasonable period of time, notify the candidate or employee of the final action and provide the candidate or employee a copy of the writings required under this subsection.~~

VII. Confidentiality. In connection with any decision regarding employment,

a. **any** information obtained by an employer that pertains to a candidate's or employee's criminal history:

i. **a.** shall remain confidential;

ii **b.** **shall only be shared with individuals who the employer has determined via the exercise of business judgment have a need to know for the purpose of evaluating or supervising the candidate or employee, unless precluded by law;** ~~shall only be shared with individuals that have a need to know the contents for the purpose of evaluating candidates or employees in a manner consistent with this Article, except as dictated by law;~~

;

- iii. c. shall not be used, distributed, or disseminated by the employer for any use other than those permitted under this Article;
- iv. d. shall not be used, distributed, or disseminated by the employer to any other entity or individual, except as dictated by law; and
- v. e. **Nothing in this Article shall be construed to prevent an employer from keeping the entirety of an employee's criminal record in the employee's confidential employment file .**

VIII. Records. An employer must keep a copy of all Criminal Records Consideration Forms completed pursuant to Section IV herein on file for 36 months.

IX. Exemptions.

- a. The prohibitions of this Article shall not apply:
 - i. ~~Where any federal or state law or regulation requires the consideration of applicant candidate or employee's criminal history for the purposes of employment, provided the exemption is limited to those offenses or types of offense that federal or state law or regulation requires the employer to consider.~~ **Where any Federal or State law, regulation, or rule requires or permits the consideration of the candidate's or employee's criminal history for the purposes of employment, or when any federal or State law, regulation, or rule restricts an employer's ability to engage in specified business activities based on the criminal records of its employees, provided that this exemption is limited both to the offenses or types of offenses specified and to the time period dictated by the applicable law. Consideration of an applicant's or employee's criminal record outside the parameters established in Section III of this Article and done pursuant to any exemption permitted by Section IX(a) herein shall occur only after a contingent offer of employment has been extended and in accordance with Section II of this Article.**
 - ii. ~~To any positions designated by the employer to participate in a federal, state, or local government program or obligation that is designed to encourage the employment of those with criminal histories.~~ **To any position designated by the employer to be part of a program or systemic effort designed specifically to encourage the employment of those with criminal histories.**

- b. It is the intent of the **Municipal** Council that exceptions under this Article be interpreted narrowly.

X. Immunity. No employer shall be found liable based on the exclusion from consideration of the portions of a candidate's or employee's criminal record deemed outside the scope of inquiry by Section III herein.

XI. Advertisements

~~In connection with any position for employment, it shall be unlawful for any employer to produce or disseminate any advertisement that expresses, directly or indirectly, any limitation on eligibility for employment arising from a candidate's criminal history. In any action against an employer under this section, any such advertisement shall be presumptive evidence that the employer authorized the advertisement.~~

a. In connection with any employment position, it shall be unlawful for an employer to produce or disseminate any advertisement or posting that directly or indirectly references the use or consideration of an applicant's criminal history, except that nothing in this Section shall preclude the expression of statutory, regulatory, or rule-based eligibility restrictions applicable to the position as described in Section IX(a) herein so long as such expression is limited to the specified offense(s) and time period(s) as established by law.

b. In any action against an employer under this Section, any such advertisement or posting shall be presumptive evidence that the employer authorized the advertisement or posting.

XII. Enforcement.

- a. **The City of Newark Business Administrator** ~~The Mayor of Newark~~ shall designate an office or agency of the City to **that shall** enforce this Article.
- b. A Type 1 violation shall be subject to a fine of up to \$500.
- c. Each Type 2 violation shall be subject to a fine of up to \$1,000.

XIII. Severability. If any provision of these sections shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

~~XIII~~ **XIV. Implementation.**

This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey. The provisions of this Article shall be effective sixty (60) days from their passage.

Article Two - Housing

I. **Definitions.** As used in this Article,

- a. "Real property" shall mean real estate, lands, multiple dwellings and hereditaments, corporal and incorporeal, and leaseholds, provided however that, the provisions of this

Article shall not apply to the rental:

- i. of a single apartment or flat in a two (2) family dwelling, the other occupancy unit of which is occupied by the owner as his/her residence or the household of his/her family at the time of such rental; or
 - ii. of a room or rooms to another person or persons by the owner or occupant of one-family dwelling occupied by him/her as his/her residence or the household of his/her family at the time of such rental.
- b. “Applicant” shall mean any person or persons seeking to rent, lease or sublease real property or who requests information from a landlord or real estate broker related to seeking a rental, lease, or sublease of real property.
- c. “Landlord” shall mean the owner, lessee, sub lessee, assignee, managing agent, and other person having the right to rent, lease, or sublease any real property or part or portion thereof, or employee or agent thereof.
- d. “Real estate broker” shall mean a person, company, corporation, firm, or association who, for a fee, commission or other valuable consideration, or by reason of promise or reasonable expectation thereof, exchanges, buys, or rents or offers or attempts to offer an exchange or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the exchange, leasing, or renting of any real estate.
- e. “Conviction” shall mean any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of unconditional discharge.
- f. “Inquiry” shall mean any direct or indirect conduct intended to gather information from or about an applicant, using any mode of communication, including but not limited to application forms, interviews, or criminal history checks from government databases or private credit reporting agencies.
- g. “Formal application” shall mean a submission by the applicant of any and all materials or information required to be reviewed by a landlord or real estate broker before the rent, lease, or sublease of real property.
- h. “Advertisement” shall mean any circulation, mailing, posting, or other form of publication, utilizing any media, promoting the landlord or real estate broker or intending to alert its audience or prospective applicants of availability of real property for rent, lease, or sublease.

- II. Criminal Record Check Practices. In connection with any rental, lease, or sublease of real property.
- a. Inquiry into and consideration of an applicant's criminal history shall take place only after the applicant has submitted a formal application. Notwithstanding the foregoing, if the applicant discloses any information regarding his or her criminal history by unsolicited voluntary written or oral disclosure, the landlord or real estate broker may discuss the criminal history disclosed by the applicant.
 - b. Prior to conducting any criminal history inquiry regarding an applicant, the landlord or real estate broker shall provide standard written notification to the applicant:
 - i. Advising that, upon the written consent of the applicant, the landlord or real estate broker will conduct a criminal history inquiry;
 - ii. Advising that upon consenting to a criminal history inquiry, the applicant has the right and opportunity of not less than three business days from the receipt of notice to submit evidence which may inform the consideration under Section IV, infra, of this Article; and
 - iii. Advising that the applicant has the right to receive a copy, upon the applicant's request, of the results of any criminal history inquiry obtained regarding the applicant.
 - iv. Attaching a copy of the Information Form Regarding Criminal Record Review - Housing, attached hereto as Appendix B. ~~Attaching a copy of the following statement:~~
 - c. **A landlord or real estate broker may hold a housing unit open until an applicant provides information about rehabilitation, but a landlord or real estate broker is not required to hold a housing unit after making an initial determination of an applicant's eligibility.** ~~The landlord or real estate broker shall provide not less than three business days from the date of the applicant's receipt of the notices required under subsection (b), supra, before a final determination refusing any rental, lease, assignment, or sublease.~~

III. Scope of Inquiry. In connection with any rental, lease, or sublease,

- a. Subject to the terms of this Article, a landlord or real estate broker shall be permitted to inquire about
 - i. indictable offense convictions in New Jersey (or, if from any other State or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute an indictable offense) for eight (8) years following the release from post-conviction custody or from the date of sentencing if the person was not incarcerated;
 - ii. disorderly persons convictions or municipal ordinance violations in New Jersey (or, if from any other State or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute a disorderly persons offense or municipal ordinance violation) for five (5) years following the release from post-conviction custody or from the date of sentencing if the person was not incarcerated; and
 - iii. pending criminal charges.
 - ~~i. indictable offense convictions for eight (8) years following the sentencing thereof, including termination of any period of incarceration;~~
 - ~~ii. disorderly persons convictions or municipal ordinance violations for five (5) years following the sentencing thereof, including termination of any period of incarceration; and~~
 - ~~iii. pending criminal charges, which shall include cases that have been continued without a finding until such time as the case is dismissed.~~
- b. Notwithstanding Section III(a) herein, all prior disorderly persons and indictable offense convictions (or, if from any other state or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute an indictable offense or disorderly persons conviction) may be considered by the landlord if any of the subject's convictions may be considered pursuant to Section III subsections (a), or (c) herein, of this Section, unless they are deemed impermissible pursuant to

Section III(d) herein.

~~Notwithstanding subsection (a), prior disorderly persons and indictable offense conviction records shall be available for the entire period that the subject's last available conviction record is available under subsection (a).~~

- c. **Notwithstanding Section III(a) herein, and subject to the terms of this Article, a landlord or real estate broker shall be permitted to consider convictions for murder, attempted murder, arson-related offenses, sex offenses requiring registry under N.J. S.A. Title 2C, Chapter 7, that are punishable by a term of incarceration in State prison, and any crime listed in 18 U.S.C. Chapter 113B - Terrorism or N.J.S.A. 2C:38 - 2 et seq., September 11th, 2001 Anti-Terrorism Act (or in any other State or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute a violation of N.J.S.A. 2C:38-2 et seq.), regardless of when they occurred.**

~~Notwithstanding subsection (a), supra, and subject to the terms of this Article, a landlord or real estate broker shall be permitted to inquire about convictions for murder, voluntary manslaughter, and sex offenses requiring registry as defined under N.J. S.A. Title 2C Chapter 7 that are punishable by a term of incarceration in state prison, regardless of the length of time that has passed since the disposition thereof.~~

- d. It shall not be permissible for a landlord or real estate broker to conduct any criminal history inquiry, require any person to disclose or reveal, or to take any adverse action against any person on the basis of
- i. any arrest or criminal accusation made against such person, which is not then pending against that person and which did not result in a conviction;
 - ii. any records which have been erased, expunged, the subject of an executive pardon, or otherwise legally nullified;
 - iii. any juvenile adjudications of delinquency or any records which have been sealed.

IV. **Required Considerations.** In connection with any rental, lease, assignment, or sublease,

- a. A landlord or real estate broker shall consider the following factors in evaluating the applicant and the results of any criminal history inquiry, conducted in accordance with the limitations of Section III:

- i. **Any information, if provided, pertaining to the degree of rehabilitation and good conduct or to the accuracy of the criminal record in question produced by the applicant, or produced on his or behalf to the landlord or real estate broker, including but not limited to any certificate of**

rehabilitation issued by any State or Federal agency, which includes but is not limited to certificates issued pursuant to N.J.S.A. 2A:168A-7;

ii. **The amount of time that has passed since the conviction(s) and/or release from custody;**

iii. **The nature of and circumstances surrounding the crime(s).**

- i. ~~The nature of the crime and its relationship to your suitability as a tenant;~~
- ii. ~~Any information pertaining to the degree of rehabilitation and good conduct, including any information produced by the applicant, or produced on his or her behalf;~~
- iii. ~~Would the applicant, as a tenant, have an opportunity for the commission of a similar offense(s)?;~~
- iv. ~~Are the circumstances leading to the offense(s) likely to reoccur?;~~
- v. ~~How much time has elapsed since the offense(s) and how did you factor that into the housing decision? and~~
- vi. ~~Any certificate of rehabilitation issued by any state or federal agency, including but not limited to certificates issued pursuant to N.J.S.A. 2A:168A-7.~~

V. **Notice. In connection with any adverse decision regarding a rental, lease, or sublease,**
~~In connection with any rental, lease, or sublease,~~

- a. If after conducting a criminal history inquiry the Landlord or Real Estate Broker makes a final determination adverse to the applicant resulting in the refusal of any rental, lease, assignment, or sublease, the Landlord or Real Estate Broker must, within ten (10) business days
 - i. notify the applicant in writing of the adverse action, stating the reasons for rejection and including the landlord's or real estate broker's consideration of factors required under Section IV of this Article; and
 - ii. provide the applicant with a ~~phot~~ copy of the results of the criminal history inquiry.
- b. A copy of all notices required under Subsection (a) shall be sent in one mailing, by registered mail, to the applicant.

VI. **Confidentiality.** In connection with any rental, lease, or sublease,

- a. any information pertaining to an applicant's criminal history obtained in conjunction with the rental, lease, or sublease process
 - i. shall remain confidential;

- ii. shall only be shared with individuals who have a need to know ~~the contents~~ for the purpose of evaluating applicants in a manner consistent with this Article;
- iii. shall not be used, distributed, or disseminated by the landlord or real estate broker for any use other than those described in this Article; and
- iv. shall not be used, distributed, or disseminated by the landlord or real estate broker to any other entity or individual, except as dictated by law.

VII. Advertisements.

- a. **In connection with any rental, lease, or sublease, it shall be unlawful for a landlord or real estate broker to produce or disseminate any advertisement that directly or indirectly references the use or consideration of an applicant's criminal history, except that nothing in this Section shall preclude the expression of statutory, regulatory, or rule-based eligibility restrictions as described in Section VIII(a) herein so long as such expression is limited to the specified offense(s) and time period(s) as established by law.**
- b. **In any action against any landlord or real estate broker under this section, any such advertisement shall be presumptive evidence that the any landlord or real estate broker authorized the advertisement.**

~~In connection with any rental, lease, or sublease, it shall be unlawful for any landlord or real estate broker to produce or disseminate any advertisement that expresses, directly or indirectly, any limitation on eligibility on the basis of criminal history. Any such advertisement shall be presumptive evidence in any action that the same was authorized by the landlord or real estate broker.~~

VIII. Exemptions.

- a. The prohibitions of this Article shall not apply;
 - i. Where any federal or state law or, regulation **or rule** requires the **or permits the** consideration of an applicant's criminal history in the rental, lease, or sublease of real property, provided the exemption is limited to those offenses or types of offenses **and time periods** that Federal or State law or, regulation **or rule** requires **or permits** the landlord or real estate broker to consider.
 - ii. To any real property designated by the **landlord or real estate broker** ~~employer~~ to participate in a federal, state, or local government program or obligation that is designed to encourage the provision of housing for individuals with criminal histories.
- b. It is the intent of the Municipal Council that exceptions under this Article be interpreted

narrowly.

- IX. Severability. If any provision of these sections shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.
- X. Implementation.
This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.
~~The provisions of this Article shall be effective sixty (60) days from their passage.~~
- XI. Enforcement. **The Newark Business Administrator shall designate an Office or Department that shall enforce the provisions of this Article**

~~This Article shall be enforceable pursuant to the procedures outlined in Chapters 18:8-1.6 through 1.8.~~

Article Three - Licensing.

- I. Definitions. As used in this Article,
- a. "Applicant" shall mean any person considered or who requests to be considered for a license by the City or who requests information from the City related to seeking a license.
 - b. "Conviction" shall mean any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of unconditional discharge.
 - c. "City" shall mean the City of Newark, or any City department, agency, board, or commission or any employee or agent thereof.
 - d. "Formal application" shall mean a submission by the applicant of any and all materials or information required to be reviewed by the City before the granting of a license.
 - e. "Inquiry" shall mean any direct or indirect conduct intended to gather information from or about an applicant for a license, using any mode of communication, including but not limited to application forms, interviews, and criminal history checks.
 - f. "License" shall mean any certificate, license, permit, authorization, or grant of permission required by the City as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. "License" shall not, for the purposes of this Article, include any license, authorization or permit to own, possess,

carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

- g. "Otherwise qualified" shall mean any applicant who meets all other criteria for a license, pursuant to the applicable provisions of the Revised General Ordinances of Newark.

II. Criminal Record Check Practices. In connection with any decision regarding a license,

- a. Inquiry into and consideration of an applicant's criminal history shall take place only after the applicant has submitted a formal application and has been found otherwise qualified to receive a license from the City. Notwithstanding the foregoing, if the applicant discloses any information regarding his or her criminal history by unsolicited voluntary written or oral disclosure, the City may discuss the criminal history disclosed by the applicant.
- b. Prior to conducting any criminal history inquiry regarding an applicant, the City shall provide standard written notification to the applicant:

- i. Advising that, upon the written consent of the applicant, the City will conduct a criminal history inquiry;
- ii. Advising that, following any adverse decision by the City retracting the conditional offer of license, the applicant will have the right and opportunity to present evidence as required by Section VII, herein,

and describing the kinds of evidence the applicant may present at that time; and

- iii. **Attaching a copy of the Information Form Regarding Criminal Record Review - Housing, attached hereto as Appendix C.**
Attaching a copy of the following statement:

III. Scope of Inquiry. In connection with any decision by the City regarding a license,

- a. Subject to the terms of this Article, the City shall be permitted to inquire about

- i. **indictable offense convictions in New Jersey (or, if from any other state or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute an indictable offense) for eight (8) years following the release from post-conviction custody or from the date of sentencing if the person was not incarcerated;**

~~indictable offense convictions for eight (8) years following the sentencing thereof,~~

including termination of any period of incarceration;

;

ii. disorderly persons convictions or municipal ordinance violations in New Jersey (or, if from any other state or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute a disorderly persons offense or municipal ordinance violation) for five (5) years following the release from post-conviction custody or from the date of sentencing if the person was not incarcerated; and

~~disorderly persons convictions or municipal ordinance violations for five (5) years following the sentencing thereof, including termination of any period of incarceration; and~~

iii. ~~pending criminal charges which shall include cases that have been continued without a finding until such time as the case is dismissed.~~

b. Notwithstanding Section III(a) herein, all prior disorderly persons and indictable offense convictions (or, if from any other state or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute an indictable offense or disorderly persons conviction) may be considered by the City, if any of the subject's convictions may be considered pursuant to Section III subsections (a), or (c) herein, of this section, unless they are deemed impermissible pursuant to Section III(d) herein. ~~Notwithstanding subsection (a), supra, prior disorderly persons and indictable offense conviction records shall be available for the entire period that the subject's last available conviction record is available under subsection (a).~~

c. **Notwithstanding Section III(a) herein, and subject to the terms of this Article, a City shall be permitted to consider convictions for murder, attempted murder, arson-related offenses, sex offenses requiring registry under N.J. S.A. Title 2C, Chapter 7, that are punishable by a term of incarceration in state prison, and any crime listed in 18 U.S.C. Chapter 113B - Terrorism or N.J.S.A. 2C:38 - 2 et seq., September 11th, 2001 Anti-Terrorism Act (or in any other State or jurisdiction, convictions for conduct which, if committed in New Jersey, would constitute a violation of N.J.S.A. 2C:38-2 et seq.), regardless of when they occurred.**

~~Notwithstanding subsection (a), supra, and subject to the terms of this Article, the City shall be permitted to inquire about convictions for murder, voluntary manslaughter, and sex offenses requiring registry as defined under N.J. S.A. Title 2C Chapter 7 that are~~

~~punishable by a term of incarceration in state prison, regardless of the length of time that has passed since the disposition thereof.~~

- d. It shall not be permissible for the City to conduct any criminal history inquiry, require any person to disclose or reveal, or to take any adverse action against any person on the basis of
 - i. any arrest or criminal accusation made against such person, which is not then pending against that person and which did not result in a conviction;
 - ii. any records which have been erased, expunged, the subject of an executive pardon, or otherwise legally nullified;
 - iii. any juvenile adjudications of delinquency or any records which have been sealed.

IV. Required Considerations. In connection with any decision regarding a license,

- a. The City shall consider the following factors in evaluating the applicant and the results of any criminal history inquiry, conducted in accordance with the limitations of Section III:

~~iii. The nature of the crime and its relationship to your suitability for the license; i.~~

i. Any information, if provided, pertaining to the degree of rehabilitation and good conduct or to the accuracy of the criminal record in question produced by the applicant, including but not limited to any certificate of rehabilitation issued by any State or federal agency, which includes but is not limited to certificates issued pursuant to N.J.S.A. 2A:168A-7;

~~Any information pertaining to the degree of rehabilitation and good conduct, including any information produced by the applicant, or produced on his or her behalf;~~

ii. The amount of time that has passed since the conviction(s) and/or release from custody; ~~Would an applicant with this type of license have an opportunity for the commission of a similar offense(s)?~~

iii. The nature of and circumstances surrounding the crime(s).

~~Are the circumstances leading to the offense(s) likely to reoccur?;~~

- ~~v. How much time has elapsed since the offense(s) and how did you factor that into the licensing decision? and~~
- ~~vi. Any certificate of rehabilitation issued by any state or federal agency, including but not limited to certificates issued pursuant to N.J.S.A. 2A:168A-7.~~

V Notice. In connection with any decision regarding a license,

- a. If after conducting a criminal history inquiry the City makes a final determination adverse to the applicant resulting in the refusal of a license, the City must, within a reasonable period of time:
 - ~~i. notify the applicant of the adverse licensing decision; provide the applicant with a photo copy of the results of the criminal history inquiry;~~
 - ii. provide the applicant with a written notice of rejection, specifically stating the reasons for rejection and including the City's consideration of the factors required under Section IV, supra herein; and
 - iii ~~iv.~~ advise the applicant of the opportunity for review under Section VII, supra herein, including how the applicant may present evidence related to the City's consideration of the factors required under Section IV, herein, and what kinds of evidence the applicant may present at that time.
- b. A copy of all notices **documents** required under Subsection V(a), herein supra, shall be **mailed** sent in one package by registered mail to the applicant.

VI. Opportunity for Review. In connection with any decision regarding a license,

- a. The applicant shall have ten (10) business days after receipt of the notices required under Section V, supra herein, to respond to the City regarding the results of the criminal history inquiry. The City shall provide the applicant with an opportunity to present information and evidence related to the accuracy and/or relevance of the results of the criminal history inquiry, including information pertaining to any of the factors listed in Section IV(a), supra herein. The City must review all information and documentation received from the applicant prior to taking any final action as to whether to grant the applicant a license
- b. The City shall document in writing the information and evidence provided by the applicant under Subsection VI(a), supra herein, the City's consideration of this information and evidence, and the City's final action, specifically stating the reasons for the final action taken. The City must, within a reasonable period of time, notify the applicant of the final action and provide the applicant a copy of the writings required under this Subsection.

VII. Confidentiality. In connection with any decision regarding a license,

- a. Any information obtained by the City that pertains to an applicant's criminal history

- i. shall remain confidential;
- ii. shall only be shared with individuals who have a need to know the contents for the purpose of evaluating applicants in a manner consistent with this Article;
- iii. shall not be used, distributed, or disseminated by the employer **City** for any use other than those described in this Article; and
- iv. shall not be used, distributed, or disseminated by the employer **City** to any other entity or individual, except as dictated by law.

VIII. Exemptions.

- a. The prohibitions of this Article shall not apply;
 - i. Where any federal or State law or regulation requires **or permits** the consideration of an applicant's criminal history for purposes of a City license, provided the exemption is limited to those offenses or types of offenses that federal or state law or regulation requires the City to consider; and
 - ii. To any license sought in conjunction with a federal, state, or local government program or obligation that is designed **specifically** to encourage the licensing, employment, or entrepreneurship of individuals with criminal histories.
- b. It is the intent of the Municipal Council that exceptions under this Article be interpreted narrowly.

IX. Severability. If any provision of these sections shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

X. Implementation.

This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

~~The provisions of this Article shall be effective sixty (60) days from their passage.~~

XI. Enforcement.

The City of Newark Business Administrator shall designate an Office or Department that shall enforce the provisions of this Article a.

~~The Ombudsman for the City of Newark shall enforce this Article pursuant to the powers outlined in Newark Ordinance 2:2-26.~~

STATEMENT

This ordinance repeals and replaces the original “Ban the Box” ordinance with a new ordinance which prohibits employers and/or landlords from using the criminal history of an applicant being considered for employment or housing during the initial interview.