



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

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AN ORDINANCE TO AMEND AND SUPPLEMENT TITLE II, ADMINISTRATION; CHAPTER 31, ENTITLED ASSISTANCE FOR THE SUCCESSFUL REINTEGRATION OF FORMERLY INCARCERATED PEOPLE INTO THE COMMUNITY (“BAN THE BOX”) OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, BY CLARIFYING PROVISIONS FOR THE USE OF CRIMINAL CONVICTIONS DURING THE BUSINESS LICENSING PROCESS.

WHEREAS, on September 19, 2012, the Municipal Council adopted Ordinance 6PSF-f 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 reintegrating into the community by assisting people with criminal convictions in reintegrating into the community and providing for their families; and

WHEREAS, on April 15, 2015, the Municipal Council adopted Ordinance 6PSF-f and was repealed and replaced with Ordinance 6PSF-b to also assist the successful reintegration of formerly incarcerated people into the community by removing barriers to 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); and

WHEREAS, the Mayor and the Municipal Council is aware that barriers continue to exist with the reintegration of individuals with criminal records as it relates to securing business licenses in the City of Newark; and

WHEREAS, the Mayor and the Municipal Council desires to assist the successful reintegration of formerly incarcerated people or people with convictions into the community by removing barriers to gainful employment so that they can become productive members of the community and provide for their families; and

WHEREAS, the Mayor and the Municipal Council desires to eliminate the barriers facing individuals with criminal records in the business licensing process by amending Ordinance 6PSF-b, April 15, 2015 to reflect that certain criminal convictions shall not be an automatic bar to receiving a business license but shall be one factor to be considered.

Note: Additions are shown in **bold and underlined**, deletions are shown by ~~strikethrough~~.

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

SECTION 1. Title II entitled Administration, Chapter 31 entitled Assistance for the Successful Reintegration of Formerly Incarcerated People into the Community (“Ban the Box”) of the revised general ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented is hereby amended as follows:

2:31-10. 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.

2:31-11. CRIMINAL RECORD CHECK PRACTICES.

In connection with any decision regarding a license,

- a. Inquiry into and consideration of any 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:
 - 1. Advising that, upon the written consent of the applicant, the City will conduct a criminal history inquiry;

2. 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 VI herein, and describing the kinds of evidence the applicant may present at that time; and
3. Attaching a copy of the Information Form Regarding Criminal Record Review - Licensing, attached hereto as Appendix C.

2:31-12. 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:~~

~~1. 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;~~

~~2. 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~~

~~3. Pending criminal charges.~~

~~b. Notwithstanding 2:31-12a., all prior disorderly persons and indictable offense convictions (or, if from any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute an indictable offense or disorderly persons conviction) may be considered by the employer if the subject's most recent conviction may be considered pursuant to Section 2:31-12a. or c., unless they are deemed impermissible pursuant to Section 2:31-12d. herein.~~

~~c. a. Notwithstanding Section 2:31-12a. herein, and subject to the terms of this Article, the City shall be permitted to consider convictions for murder, attempted murder, arson-related offenses, sex offenses requiring registry as defined under N.J.S.A. Title 2C: 7-1, et seq., 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 - 1. 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: -38-1, et seq.), regardless of when they occurred.~~

~~d. b. 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:~~

~~1. 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;~~

~~2. Any records which have been erased, expunged, the subject of an executive pardon, or otherwise legally nullified; or~~

~~3. Any juvenile adjudications of delinquency or any records which have been sealed.~~

2:31-13. 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 2:31-12:

1. 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 her behalf to the City, 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-1 to 16;

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

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

4. The fact that an individual has an indictable conviction or disorderly person's offense shall not be an automatic bar to receiving a business license, but rather shall be a factor to be considered in the application process consistent with the provisions of this Chapter and New Jersey law.

2:31-14. NOTICE.

In connection with any adverse 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 shall, within a reasonable period of time:

1. Provide the applicant with a copy of the results of the criminal history inquiry;

2. 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 2:31-13; and

3. Advise the applicant of the opportunity for review under Section 2:31-15, including how the applicant may present evidence related to the City's consideration of the factors required under Section 2:31-13; and what kinds of evidence the applicant may present at that time.

b. A copy of all documents and notices required under Section 2:31-14a. shall be mailed in one package by registered mail to the applicant.

2:31-15. OPPORTUNITY FOR REVIEW.

In connection with any adverse decision regarding a license:

a. The applicant shall have ten (10) business days after receipt of the documents and notices required under 2:31-14 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 2:31-13a. 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 Section 2:31-15a., 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 section.

2:31-16. CONFIDENTIALITY.

In connection with any decision regarding a license:

- a. Any information obtained by the City that pertains to an applicant's criminal history:
 1. Shall remain confidential;
 2. 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;
 3. Shall not be used, distributed, or disseminated by the City for any use other than those described in this Article; and
 4. Shall not be used, distributed, or disseminated by the City to any other entity or individual, except as dictated by law.

2:31-17. EXEMPTIONS.

- a. The prohibitions of this Article shall not apply:
 1. Where any federal or state law, regulation, or rule 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 and time periods that federal or state law, regulation, or rule requires or permits the City to consider; and
 2. 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.

2:31-18. ENFORCEMENT.

The City of Newark Business Administrator shall designate an office or department that shall enforce the provisions of this Article.

SECTION 2: If any provision of this Ordinance or application thereof to any person(s) or

circumstance is judged invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalidated provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 3: The Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance Amends Title II, Administration; Chapter 31, entitled Assistance for the Successful Reintegration of Formerly Incarcerated People into The Community (“Ban the Box”) of the Revised General Ordinances of the City of Newark, New Jersey, 2000, as amended and supplemented, by adding provisions to clarify the use of criminal convictions during the business licensing process.