# Legislation Details (With Text)

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| **Title:** | 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 (Ban the Box Ordinance)<br>Sponsor: Rice | | | | |
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| 9/19/2012 | 1 | Municipal Council | Close on Public Hearing and Adopt | Pass |
| 9/6/2012 | 1 | Municipal Council | Adopt on First Reading | Pass |
| 8/1/2012 | 1 | Municipal Council | Advance to First Reading | Pass |

**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 (Ban the Box Ordinance)**
**Sponsor: Rice**

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 44$^{th}$ worst state, meaning it had more statutes creating collateral consequences than all but six states; and

**WHEREAS**, ninety-five percent 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 reentry 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;

**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 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.

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

:

**Article One - Employment**

II. 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.
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. “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. “Otherwise qualified” shall mean any candidate who meets all other criteria for a position or consideration for a position.

i. “Pre-application inquiry” shall mean any inquiry 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. 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. 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. 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.

b. An employer shall not 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. Notwithstanding the foregoing, if the candidate 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. 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. 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;

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

a. Subject to the terms of this Article, an employer shall be permitted to inquire about

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 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), supra, and subject to the terms of this Article, an employer shall be permitted to inquire about convictions for murder, voluntary manslaughter, 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.

d. 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 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.

V. Required Considerations. In connection with any decision regarding employment,

a. An employer shall consider 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:

i. The nature of the crime and its relationship to the duties of the position sought or held;

ii. Any information pertaining to the degree of rehabilitation and good conduct, 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)?;



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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 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.

VI. 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 offer of a position with the employer, or termination of employment, the employer must, within a reasonable period of time:

i. notify the candidate or employee of the adverse employment decision;

ii. provide the candidate or employee with a photocopy 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 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 notices required under subsection (a), supra, shall be sent in one package by registered mail to the candidate or employee.

VII. Opportunity for Review. In connection with any decision regarding employment,

a. 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. 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



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the candidate or employee a copy of the writings required under this subsection.

VIII. 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. shall remain confidential;
    ii. 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. shall not be used, distributed, or disseminated by the employer for any use other than those permitted under this Article;
    iv. shall not be used, distributed, or disseminated by the employer to any other entity or individual, except as dictated by law; and
    v. shall be removed from the candidate or employee's permanent human resources or personnel file upon commencement of employment.

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

X. 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.

XI. Enforcement.

a. The Mayor of Newark shall designate an office or agency of the City to 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 $1000.

XII. 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. Implementation. 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 incorporal, 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.

l. "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.

f. "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.



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g. "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 following statement:

c. 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 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 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 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. 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 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 photocopy 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. 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


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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 requires 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 that federal or state law or regulation requires the landlord or real estate broker to consider.

ii. To any real property designated by the 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 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. The provisions of this Article shall be effective sixty (60) days from their passage.

XI. Enforcement. 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



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

iii. 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 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 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), 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:

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

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 an applicant with this type of license 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 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;

ii. provide the applicant with a photocopy of the results of the criminal history inquiry;

iii. 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; and

iv. advise the applicant of the opportunity for review under Section VII, infra, including how the applicant may present evidence related to the City's consideration of the factors required under Section IV, supra, and what kinds of evidence the applicant may present at that time.

b. A copy of all notices required under subsection (a), supra, shall be 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, 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. 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 (a), supra, 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 City for any use other than those described in this Article; and

iv. shall not be used, distributed, or disseminated by the employer to any other entity or individual, except as dictated by law.



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VIII. Exemptions.

a. The prohibitions of this Article shall not apply;

i. Where any federal or state law or regulation requires 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 to encourage the licensing, employment, or entrepreneurship of individuals with criminal histories.

b. It is the intent of the 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. The provisions of this Article shall be effective sixty (60) days from their passage.

XI. Enforcement.

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


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