

City and County of San Francisco



Edwin M. Lee
Mayor

Human Rights Commission

Contract Compliance
Dispute Resolution/Fair Housing
Small and Micro Local Business Enterprise
Lesbian Gay Bisexual Transgender & HIV Discrimination

Theresa Sparks
Executive Director

April 14, 2011

Mayor Edwin Lee, Mayor
City of San Francisco

Hon. David Chiu, President
Members, San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Dear Mayor Lee, President Chiu and Members:

We are writing to express strong support for amending San Francisco Codes, including but not limited to, Chapter 12 of the Administrative Code and Article 33 of the Police Code, to prohibit discrimination against persons on the basis of an arrest or conviction record.

On March 29, 2011, the Reentry Council of San Francisco voted unanimously to prohibit such discrimination, recognizing the lifelong collateral consequences experienced by people with prior arrest or conviction records in accessing employment and housing.

Background

One in four adults in California (almost 7 million Californians) has a misdemeanor or felony arrest or conviction record. When those adults seek employment or housing, they often face blanket denials. Further, the disproportionate representation of African Americans and Latinos in the criminal justice system has concentrated the social and economic disadvantages of such discrimination in communities of color.

The use of criminal background checks can help ensure public safety; however, too often, criminal background checks are used indiscriminately and overbroadly. These practices create lifelong barriers for people with arrest and conviction records who are seeking housing, employment, and other opportunities. Moreover, overboard exclusion of people based on arrest or conviction record actually compromises public safety. The removal of obstacles to employment and housing for people with arrest or convictions record increases public health and safety by providing economic and social opportunities to a large group of people living in the City.¹ Studies have shown that providing individuals the opportunity for stable employment

¹ "According to the available research and the analyses in this brief, jurisdictions with increased employment had positive public safety outcomes when compared with jurisdictions with more unemployment." Aliya Maseelall, Amanda Petteruti,



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actually lowers recidivism rates proving that people who are employed significantly are less likely to be re-arrested.²

Joining almost thirty cities and counties and six states, the City and County of San Francisco has already implemented a local fair hiring policy for employment with the City and County.³ For jobs where a conviction is not a statutory bar, San Francisco evaluates conviction history on a case-by-case basis, considering several factors in determining an applicant's suitability for the job.

The City and County of San Francisco has a long and proud tradition of advancing the civil and human rights of people who are not otherwise protected by state or federal law. Building on its fair hiring policies in the public sector, San Francisco now has the opportunity to join other jurisdictions that have addressed the widespread discrimination still existing in the private sector.⁴

Considerations

The recommendation contained herein shall apply except to the extent permitted by federal, state, or local law. The recommendation shall not conflict, and shall not be interpreted to conflict, with any federal, state, or local law that restricts employment, housing, or other opportunities on the basis of an arrest or conviction record. For example, this recommendation would not provide a basis to challenge local, state or federal law restricting employment based on certain types of convictions, which includes, but is not limited to, the following general job categories: occupations working with youth, the disabled, and elderly; health and safety occupations; public safety and security occupations; and occupations requiring licenses.⁵ The Human Rights Commission (HRC) recognizes that there may be cases which give rise to preemption. We understand that the City Attorney's Office will then provide necessary analysis and advice on this and related issues prior to the development of an ordinance or related compliance guidelines.

Further, the HRC recognizes that the implementation of this recommendation would affect the activities of a range of stakeholders, including but not limited to, other City/County departments and contractors, businesses, property owners, and others. We understand that

Nastassia Walsh, & Jason Ziedenberg, *Employment, Wages and Public Safety*, Justice Policy Institute (Nov. 2007) P.6, available at http://www.justicepolicy.org/images/upload/07_10_REP_EmploymentAndPublicSafety_AC.pdf.

² According to a study in Illinois that followed 1,600 individuals recently released from state prison, only 8 percent of those who were employed for a year committed another crime, compared to the state's 54-percent average recidivism rate. American Correctional Assoc., 135th Congress of Correction, Presentation by Dr. Art Lurigio (Loyola University) Safer Foundation Recidivism Study (August 8, 2005).

³ See "Conviction History FAQ," SF Department of Human Resources, <http://sfdhr.org>.

⁴ Cities that require vendors to adhere to fair hiring policies that move consideration of applicant conviction history until final stages of hiring include Boston, MA; Cambridge, MA; Worcester, MA; New Haven, CT; and Hartford, CT. Massachusetts, Wisconsin, Hawaii, Pennsylvania, and New York require private employers to adhere to various fair hiring measures. In addition, five jurisdictions—Madison, Appleton, and Dane County in Wisconsin and Urbana and Champaign in Illinois—have passed ordinances that prohibit discrimination against individuals with an arrest or conviction record in housing.

⁵ In the matter of licenses, however, which overlaps with most of these categories, state law mandates that a board may only deny a license based on a conviction if the conviction is "substantially related" to the work. (Cal. Bus. & Prof. Code § 480).

affected stakeholders should have an opportunity to consider how best to implement this recommendation. To that end, the HRC and the Reentry Council support all appropriate efforts to ensure that stakeholder input is obtained and meaningfully considered. The HRC is pleased that the Mayor's Office of Housing is committed to facilitating conversations with stakeholders to ensure that the language for the proposed ordinance and related guidelines support successful implementation of this recommendation in affordable housing.

Article 33 of the San Francisco Police Code sets forth the City's policy to eliminate discrimination based on race, religion, color, ancestry, national origin, place of birth, age, sex, religion, creed, disability, sexual orientation, gender identity, weight or height. Protections include those in the areas of employment, housing, business establishments, and public accommodations within the City and County of San Francisco.

Chapter 12A of the San Francisco Administrative Code sets forth the powers and duties of the City and County's Human Rights Commission and Department. Chapters 12B and 12C set forth the non-discrimination provisions required of any agency with a contract or property contract with the City and County of San Francisco.

The HRC is responsible for monitoring compliance of both Article 33 of the Police Code and Chapter 12 of the Administrative Code. If amendments were adopted, the HRC will develop detailed compliance guidelines to facilitate the appropriate implementation. The HRC will develop these guidelines in consultation with all affected stakeholders, including but not limited to, the Reentry Council of the City and County of San Francisco, other City/County departments and contractors, businesses, landlords and property owners, public safety partners, and civil rights organizations.

Recommendation

The HRC recommends that the Mayor and Board of Supervisors modify Article 33 of the San Francisco Police Code, Chapter 12 of the San Francisco Administrative Code in order to prohibit discrimination on the basis of an arrest or conviction record. *For purposes of this recommendation, "arrest or conviction record" shall mean "a record from any jurisdiction that may include, but not be limited to, detentions, arrests, juvenile petitions sustained, and/or convictions."*

Employment

Article 33 of the Police Code applies to all employers within San Francisco, including employment agencies, labor organizations, or persons engaging the services of an independent contractor. Chapter 12B prohibits discrimination in employment by contracting agencies of the City and County. Chapter 12C prohibits discrimination in the provision of services, including accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization by the contracting agencies of the City and County.

Except as otherwise provided by law, it is recommended that the following activities be prohibited:

- 1) To inquire at any time about an applicant's arrests that did not lead to conviction;
- 2) To inquire about an applicant's conviction record prior to determining whether the applicant is otherwise qualified for the position;
- 3) To base an employment decision on a conviction, unless the conviction is determined to be a substantially job-related conviction.

For purposes of this recommendation, a "substantially job-related conviction" shall mean that the conduct for which the person was convicted has a substantial, direct, and specific negative bearing on a person's fitness or ability to perform the duties or responsibilities necessarily related to the position.

Further, the HRC recommends the following policy on the use of background check reports in employment:

- 1) If the employer determines that a conviction is substantially job-related, the job applicant must be notified immediately and provided a copy of the background check report, to the extent permitted under federal, state, and local law.⁶
- 2) The applicant shall be notified of the grounds for, and have an opportunity to appeal, an adverse employment action based on the background check report.

For the purposes of this recommendation, "background check report" means any criminal history report, including those produced by the California Department of Justice, the Federal Bureau of Investigation, or other law enforcement agencies, or by any private consumer reporting agency.

Housing, Business Establishments, and Public Accommodations

Article 33 of the Police Code prohibits discriminatory activity in housing and in business establishments and public accommodations within San Francisco.⁷ Chapter 12C prohibits discrimination in the provision of services, including accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization by the contracting agencies of the City and County.

Except as otherwise provided by law, it is recommended that in any real property transaction, it shall be prohibited to inquire at any time about an applicant's arrests that did not lead to conviction. Further, nothing shall prohibit refusal to buy, sell, finance, rent or lease a real property unit unless the conviction is reasonably housing-related.

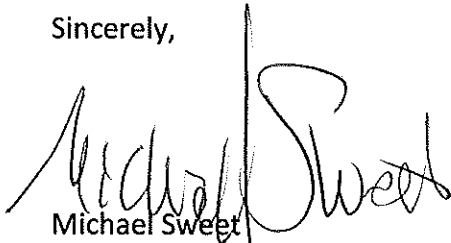
⁶ Under the federal law, the Fair Credit Reporting Act (15 U.S.C. § 1681, *et seq.*), employers must provide a copy of an applicant's commercially-prepared background check report before the employer makes an adverse employment decision based on the report. California's Investigative Consumer Reporting Agencies Act (ICRAA) (Cal. Civil Code §1785, *et seq.*) provides broader protection, including requiring notice to the applicant of the option to receive the background check report. Criminal history reports produced by the California Department of Justice, the Federal Bureau of Investigation, or other law enforcement agencies are subject to laws that protect access to and sharing of these reports.

⁷ Exceptions include the rental or leasing of any housing unit in which the owner or any member of his or her family occupies one of the living units and it is necessary to share a bathroom or kitchen facility in common with the prospective tenant or the structure contains fewer than three dwelling units.

For purposes of this recommendation, reasonably housing-related conviction shall mean that the conduct for which the person was convicted has a reasonably direct negative bearing on the safety of persons or property, given the nature of the housing.

Pursuant to a unanimous vote by the Human Rights Commission on April 14, 2011, the Commission urges the Mayor and the Board to adopt an ordinance to effectively implement this recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Sweet". The signature is written in a cursive style with a large, prominent "S" at the end.

Michael Sweet
Commission Chair

A handwritten signature in black ink, appearing to read "Theresa Sparks". The signature is written in a cursive style with a large, prominent "S" at the end.

Theresa Sparks
Executive Director

cc: Members of the Reentry Council of City and County of San Francisco
Human Rights Commissioners