

# FAIR CHANCE HIRING UPDATE

HUMAN RESOURCES DEPARTMENT

Economic  
Opportunity  
Committee

November 9,  
2015

# PURPOSE

**Provide an update on Fair Chance Hiring and Ban-the-Box expansion to all employers in Austin.**

# ACTIVITIES SINCE OCTOBER EOC MEETING

- **May 21, 2015** - Resolution passed by City Council
  - **June** - Staff preparation and stakeholder group formation
  - **July and August** - Four resolution stakeholder meetings held
  - **September** - Staff analysis and benchmarking
  - **October 9, 2015** - Additional resolution stakeholder in-person meeting
  - **October 12, 2015** - Staff Presentation to Economic Opportunity Committee (EOC)
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- **October 15 - November 4** - Online survey distributed & responses received
  - **October 27** - In-person meeting with business stakeholders held
  - **November 3** - Two online webinars held
  - **November 8** - Update provided to EOC

# RESOLUTION STAKEHOLDER GROUP: ATTENDEES AT JULY/AUG MEETINGS

- Travis County Sheriff Department
- Greater Austin Asian Chamber of Commerce
- Greater Texas Landscape Services
- Austin Gay and Lesbian Chamber of Commerce
- Austin Community College
- Austin Area Urban League
- MEEEL Justice Center
- Austin-Travis County Re-Entry Roundtable
- Hoover's Restaurant
- Texas Civil Rights Project
- African-American Youth Harvest Foundation
- Labors International Union of North America
- Texas Advocates for Justice
- Equal Justice Center
- Xoffenders' Council
- City of Austin Economic Development Department

# RESOLUTION STAKEHOLDER GROUP RECOMMENDATIONS 8/18/15

- **“Ban the Box”**
  - Public and Private employers with 10 or more employees
  - Applicant not asked about criminal history until identified as top candidate
  - Ordinance go into effect sixty (60) days from passage
- **Fair Chance Hiring (FCH)**
  - Employer maintain records of applicants who were provided offers
  - Employer retain personnel and employment records
  - Employer identify positions requiring background checks prior to application
  - Employers use TxDPS only to conduct background checks
  - Employer required to include language on background checks on job postings/announcement
  - Employer to provide to candidates a written conditional offer letter or notification of non-selection
  - Employer ensures individual criminal history reports remain confidential
  - City shall review vendor policies and ensure consistency with ordinance
  - City only do business with vendors that have adopted FCH practices

# ENTITIES/GROUPS

## OCTOBER & NOVEMBER FORUMS

- 200+ Business Invited to meetings
  - 16 business/individuals participated in 10/27 in-person forum
  - 20 businesses/individuals participated 11/3 in online forum
- 200+ businesses sent survey
  - 47 businesses responded to survey
- Entities represented at in-person community forum:
  - Liuna Local 753
  - PJS of Texas Inc.
  - Travis Transit
  - Austin Chamber
  - Mom's Best Friend
  - Cleanscapes
  - Austin Interfaith
  - Marshall & Marshall Construction
  - Best Choice Mobile Notary
  - Austin Gay and Lesbian Chamber
  - AFSCME
  - Austin American Statesman
  - Equal Justice Center
  - Austin Interfaith
  - IBEW Local 520
  - HID Global

# SAMPLE OF BUSINESS STAKEHOLDERS CONTACTED

Grande Communications	Starwood Austin Customer Contact Center	Baby Acapulco Restaurants	H-E-B
White Lodging	THE	Logisticare	Invenio Solutions
Hyatt Hotels & Resorts	The Home Depot	Progressive Insurance	Cappgemini
LegalShield	RBFCU	AppleOne Employment Services	Raising Cane's & Chicken Fingers
New York Life Insurance Co.	Apple	Texas Mutual Insurance Company	Snap Kitchen
Time Warner Cable	Evins Personnel Consultants, Inc	Visa Inc	Towne Park
Capital Metro	Renewal by Andersen	United Heritage Credit Union	Hilton Austin
Nexxlinx of Texas	Meador Staffing Services	Conns	Lexus of Austin
US Foods	Manpower	Noodles & Company	Silverleaf Resorts
A+ Federal Credit Union	Dr Pepper Snapple Group	Seton Healthcare Family	Hewlett Insurance Group, LLC
Enterprise Rent-A-Car	AT&T	Texas State Low Cost Insurance	Lowe's
Hanger Inc.	Austin Business Journal	Signpost	GCA Services Group
Farm Credit Bank of Texas	TRAVIS TRANSIT MANAGEMENT, INC.	Modern Woodmen	Peak Performers

# BUSINESS STAKEHOLDER COMMENTS IN-PERSON AND ONLINE FORUM

- Take the question off the application
- Apply to businesses with 10 or more employees.
- City should do business with vendors that adopt this policy
- Exclusions: jobs working with vulnerable populations, Law Enforcement, etc.
  - Concern about companies that have to consider their client's hiring standards (Staffing Agencies).
- Delay of penalties, or warning period. Long education plan before any penalties.
  - When there eventually is penalties; graduated penalty system, No criminal charges at all.
- Implementation: anywhere from 90-180 days to one year
- Need for strong education program from city
  - PR plan, information on City Website
- Record retention would cause an administrative burden (especially to smaller businesses)
- Businesses should identify the positions that need criminal background investigations
- Consensus to not limit checks to TX DPS
  - It doesn't take into account other states, military discharges, arrests not yet convicted, etc.
- Information on if a job requires a criminal background check should be on job posting
- A limitation at how far back an employer can look (4 years, 7 years (FCRA), 10 years)
- The notice of rights could be done in line with the Fair Credit Reporting Act
- The background check should be run earlier in the process (After the first interview)
  - After top candidate also suggested
- All records should remain confidential
- Include non retaliation clause
- Businesses don't need more regulation

# BUSINESS STAKEHOLDER COMMENTS

## CONT.

### ■ Concerns or Clarifications

- Need clear definition of “employer”, and who that applies to (subcontractors, staffing agencies, etc.)
- Consider exempting jobs working in others’ homes (cleaning, etc.)
- Should take into account businesses not headquartered in Austin.
- If requiring record retention, frame similar to EEO standards
- Take away penalties, offer incentives instead
- Only education plan, no penalties
- Penalty fee should not go to complainant
- Some wanted internal or independent monitoring
- Consider time period to dispute/time for review of new material
- The employer should be the one to define the relevancy of the crime to the position the applicant is being hired for
- Providing a notice of rights and written conditional offer could be a burden and costly to businesses (negative impact on timing, costs, etc.)
- This could delay the whole hiring process. Be sure to consider businesses current hiring practices
  - Could waste time of business’ and applicants
  - Different types of jobs have different hiring times
- Be cautious of indemnification of businesses
  - Who is liable? The business? The applicant?

# COMMON BUSINESS STAKEHOLDER COMMENTS

- During the in-person stakeholder meeting, majority of stakeholders felt:
  - Do not require record keeping aside from what was already required by law
  - Include an extensive education component before assessing fines
  - Emphasize warnings before enacting penalties
  - Have exclusions for employees working with vulnerable populations
  - Include a longer implementation timeframe
  - Do not limit checks to TxDPS
  - Only remove the “box” from the initial job application; don’t go further
  - Position should advertise if it will require a background check so applicants are aware of the requirements before applying

# SURVEY RESULTS

## 47 RESPONDENTS TO SURVEY

- **How many employees does your business employ?**
  - Less than 15 employees (39.58%),
  - 15 – 50 employees (31.25%),
  - 51- 100 employees (4.17%),
  - 101 - 500 employees (14.58%),
  - 501 – 1,000 employees (6.25%),
  - More than 1,000 employees (4.17%)
- **Does your business currently conduct criminal background checks on applicants and employees?**
  - Yes (70.83%); No (29.17%)
- **Does your business use the Texas Department of Public Safety to run background checks?**
  - Yes (31.91%); No (68.09%)
- **What types of businesses should be exempt?**
  - **Most Recorded Answers:** Security/Law Enforcement, working with Vulnerable populations (children, elderly, disabled), Schools, Medical professions, Financial institutions, All Businesses, None,
  - **Varied Answers:** those regulated by Alcohol, Tobacco, and Firearms (ATF) due to possession and use of explosives or those in contact with chemicals, any private sector business, Law Firms, CPA firms, Construction, when they have contracts that require a background check.

# SURVEY RESULTS, CONT.

## 47 RESPONDENTS TO SURVEY

- **Best time for businesses to conduct background checks?**
  - After 1st interview (50.00%);
  - After identifying top candidate (22.73%);
  - After written conditional offer extended (27.27%)
- **Notification of Non-Selection?**
  - Yes (65.96%); No (34.04%)
- **Requirement to provide a copy of the criminal background report to job candidates?**
  - Yes (53.06%); No (46.94%)
- **What penalties should businesses be assessed for violations?**
  - Warning (80.95%); Mandatory training (38.10%);
  - Monetary penalty (35.71%);
  - Restriction from doing business with the City of Austin (26.19%)
- **If the Fair Chance Hiring resolution passes, then how long afterwards should the resolution become effective?**
  - 60 days (14.29%);
  - 90 days (21.43%);
  - 180 days (64.29%)

# STAFF ANALYSIS ACTIVITIES

- Identified and analyzed ordinances in eight benchmark cities.
  - Seattle, Buffalo, San Francisco, Baltimore, Columbia (MO), Newark, New York, Washington D.C.
- Defined twelve key provisions to confirm areas of commonality
- Created surveys and conducted live interviews with five cities to gain detail on enforcement processes
- Discussed legal issues and consulted with City Law department
- Held business stakeholder meetings
- Reached out to companies that promote FCH in states without provisions
- Policy options considered from all parties
- Reviewed all questions and concerns from Council members

# PRIVATE EMPLOYERS

- Private employers that have Banned the Box
  - Walmart
  - Target
  - Accenture
  - Home Depot
  - Facebook
  - Starbuck's
  - Proctor and Gamble
  - Microsoft
  - Koch Industries
  - Royal Dutch Shell
  - British Petroleum
  - Bed, Bath and Beyond
  - Waste Management
  - Regency Centers

# SUMMARY OF BENCHMARKED CITIES

City	Date Law Effective	Minimum Employees	Who does the enforcement?	Penalties
Newark, NJ	11/18/12	15	Human Rights Commission	-Type 1 - \$500 -Type 2 - \$1000
Buffalo, NY	1/1/14	15	Committee on Civil Rights and Community Relations	-1st offense- \$500 -Subsequent- \$1000
Columbia, MO	1/1/14	1	Human Rights Commission	-Each offense - up to \$1000 and/or - up to 30 days imprisonment
Baltimore, MD	8/13/14	10	Baltimore Community Relations Commission	-Each offense - up to \$500 and/or - up to 90 days imprisonment
New York, NY	10/27/15	4	Commission on Human Rights	(Specific language not found in ordinance.)

# SUMMARY OF BENCHMARKED CITIES

## (CONTINUED)

City	Date Law Effective	Minimum Employees	Who does the enforcement?	Penalties
Seattle, WA	11/1/13	1	Seattle Office of Civil Rights	-1st offense- Warning -2nd offense- \$750 (100% to charging party) -Subsequent- \$1000 (100% to charging party)
San Francisco, CA	1/13/14	20	Office of Labor Standards	<u>Aggrieved person:</u> -liquidated damages in the amount of \$50/day, back pay, reinstatement, benefits/pay unlawfully withheld, reasonable attorney's fees & costs
District of Columbia	12/17/14	10	Office of Human Rights	<u>Employer (based on employee size):</u> 11-30 - Up to \$1000 31-99 - Up to \$2500 100+ - Up to \$5000 <u>Aggrieved person:</u> -back pay, reinstatement, compensatory damages and reasonable attorney's fees

# POLICY PROVISIONS: THE POLICY STRUCTURE IN 8 BENCHMARK CITIES

Provision	%	Comments from Research
1. Definitions	75%	The policies with definitions were easier to understand and interpret.
2. Ban the box	100%	Although all policies included some language on this important topic, not all policies clearly defined it and the term can have a negative connotation.
3. Clarifying when to inquire about conviction history	100%	Results showed an even split where half of the cities defined that inquiries could be made “after the 1 <sup>st</sup> interview” and the other half stated “once an offer is made”.
4. Evaluation criteria for criminal history	88%	Municipalities consistently provided guidance and expectations on how to assess relevant criminal history.
5. Jobs exempt from the policies	100%	State and federal law requirements were cited as exceptions.

# POLICY PROVISIONS (CONTINUED): THE POLICY STRUCTURE IN 8 BENCHMARK CITIES

Provision	%	Comments from Research
6. Provide notice of adverse action	63%	Employers must identify disqualifiers and provide a copy of the report.
7. Define period for filing grievance/dispute	75%	These three categories are very inter-related. There were inconsistencies between what was discussed as a 'dispute of the decision' on an applicants qualifications versus a general violation of the ordinance.
8. Hold job open	50%	
9. Timeframe for employer to reconsider	38%	
10, Tracking and reporting activity metrics	38%	For those who defined reporting, one required employers to track, the other two required the City to track.
11. Penalties for non-compliance	88%	There was a high-level of agreement that a progressive penalty system was necessary.
12, Non-Retaliation Clause	50%	It is unclear what led some cities to include this provision and not others.

# POLICY CONCEPT CONSIDERATIONS

- **Three Concept Options**
- **Education Plan**
- **Enforcement and fines**
- **Legal Impacts**
- **Resolution Stakeholder concerns**
- **Business Sector Concerns**
- **Possible administrative needs & resources**

# POLICY CONCEPTS

Concept A	Concept B	Concept C
<p><b>1. Ban the Box</b></p> <ul style="list-style-type: none"> <li>Removing the question of criminal history from both paper and online applications. For businesses that don't have an application, this would also have to extend to non-written inquiries.</li> </ul> <p><b>2. Include Definitions</b></p> <ul style="list-style-type: none"> <li>Employer: 15 or more</li> </ul>	<p><b>1. Ban the Box</b></p> <ul style="list-style-type: none"> <li>Removing the question of criminal history from both paper and online applications. For businesses that don't have an application, this would also have to extend to non-written inquiries.</li> </ul> <p><b>2. Includes Definitions</b></p> <ul style="list-style-type: none"> <li>Employer: 10 or more</li> </ul> <p><b>3. Defines when an employer can inquire into criminal background</b></p> <ul style="list-style-type: none"> <li>When top candidate is identified</li> </ul> <p><b>4. Defines Evaluation Criteria</b></p> <ul style="list-style-type: none"> <li>Encouraging employers to reevaluate positions that do not require background checks</li> </ul> <p><b>5. Notification of Adverse Action (Non-Selection)</b></p> <ul style="list-style-type: none"> <li>No period for appeal</li> </ul> <p><b>6. Retaliation clause to protect those who file complaints</b></p>	<p><b>1. Ban the Box</b></p> <ul style="list-style-type: none"> <li>Removing the question of criminal history from both paper and online applications. For businesses that don't have an application, this would also have to extend to non-written inquiries.</li> </ul> <p><b>2. Includes Definitions</b></p> <ul style="list-style-type: none"> <li>Employer 10 or more</li> </ul> <p><b>3. Defines when an employer can inquire into criminal background</b></p> <ul style="list-style-type: none"> <li>When a written or verbal conditional offer is made</li> </ul> <p><b>4. Defines Evaluation Criteria</b></p> <ul style="list-style-type: none"> <li>Require employers to reevaluate positions that do</li> <li>Relevancy of conviction, rehabilitation</li> </ul> <p><b>5. Notification of Adverse Action (Non-Selection)</b></p> <ul style="list-style-type: none"> <li>Appeal period to be held</li> </ul> <p><b>6. Retaliation clause to protect those who file complaints</b></p> <p><b>7. Requirement of all City Vendors to comply with ordinance</b></p> <p><b>8. Job Posting/Advertisement language must be all inclusive and cannot discriminate</b></p> <p><b>9. Require businesses to only use the DPS as their vendor for running criminal background investigations</b></p> <p><b>10. Employers must maintain records and all information must be tracked and reported</b></p>

# CONCLUSION

- Concepts range from Ban the Box as directed by EOC to the full Fair Chance Hiring provisions recommended by resolution stakeholders
- Fines for enforcement progressive with warning
- The more progressive the concepts require more funding and administrative resources for proper education and compliance
- Marketing, Education and Outreach for Fair Chance Hiring must be expansive with a professional education and marketing campaign/effort.
  - Long-term Education Plan is needed