Ordinance No. 5363

AN ORDINANCE PROHIBITING UNFAIR DISCRIMINATION IN CITY HIRING POLICIES AGAINST PERSONS PREVIOUSLY CONVICTED

WHEREAS, currently 8,915 persons reside in Shelby County who are either on probation or parole or some other form of early release; and

WHEREAS, background checks by employers have increased at record rates, with 80% of large employers in the U.S. now screening their workers for convictions; and

WHEREAS, formerly incarcerated people represent a group of job seekers, ready to contribute and add to the work force; and

WHEREAS, research shows that lack of employment is a significant cause of recidivism; with people who are employed proving significantly less likely to be re-arrested; and

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

WHEREAS, the City of Memphis has an obligation to act as a model employer to promote within itself the employment of people with prior convictions and to promote this employment to the private and non-profit sectors; and

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

WHEREAS, it is the intent and purpose of this ordinance to enhance the health and security of the community by assisting people with conviction histories to reintegrate into the community and to provide for their families and themselves; and

WHEREAS, it is the intent and purpose of this ordinance to ensure that the City of Memphis implements just and fair measures and practices when screening and identifying persons eligible for employment, regardless of whether they have had past convictions or arrests; and

WHEREAS, it is the intent and purpose of this ordinance to not have hiring policies that artificially limit the applicant pool by discouraging applicants with conviction histories from applying for city employment, which would undermine the City's goal to hire the best qualified applicants for City employment.

NOW, THEREFORE, BE IT ORDAINED that the City of Memphis Code of Ordinances be amended as follows:

SECTION 1. Definitions.

Applicant means any person considered for, or who requests to be considered for, employment by the City of Memphis.

City means the City of Memphis or any division, department, agency or office thereof, unless specifically excluded by this section.

Conviction means any sentence arising from a plea or verdict of guilty, including a sentence of incarceration, a suspended sentence, a sentence of probation or a sentence of unconditional discharge.

Employment means any occupation, vocation, job, or work for 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. Employment shall not, for the purposes of this section, include any sworn position.

"Relationship to the job" means the nature of criminal conduct for which the person was convicted has a direct and/or specific negative bearing on a person's fitness or ability to perform one or more of the duties or responsibilities necessarily related to the employment sought.

"Otherwise Qualified" means any Applicant who meets all other criteria for a position or consideration for a position.

SECTION 2. Prohibitions Against Unfair Discrimination Against Persons Previously Convicted.

1. Except as otherwise dictated by state and federal law, the City shall not inquire about an Applicant's conviction history until after it has been determined that the Applicant is otherwise qualified for the position. City job applications shall not contain a "box" or inquiry regarding a job applicant's prior convictions. This does not apply to Police, Fire and Emergency Medical Services positions.

2. After an applicant has been identified as otherwise qualified for the position, the City will offer a conditional offer of employment to the applicant, pending a conviction history check by the Human Resources Division. Prior to conducting any conviction history check on an Applicant, the applicant will be required to complete a form listing any criminal history. Once the form has been received the City must provide a standard written notification to the Applicant advising: (a) that a conviction history check is going to take place, (b) that he or she will have the opportunity to rebut a decision by the City should it decide to retract the conditional offer of employment, and (c) what kinds of specific evidence the Applicant can present during this rebuttal.

3. If, as a result of a conviction history check, the City finds a valid reason to refuse, rescind, or revoke the offer of a position to an Applicant, then the City must immediately notify the Applicant of the potential adverse employment action, and provide the Applicant with a photocopy of the conviction history report with a highlight(s) of the particular conviction(s) that relates to the job's responsibilities, thus warranting a denial of employment.

    (a) The Applicant or current employee shall have ten (10) business days, after receipt of notice and the photocopy of the conviction history report from the City, to respond to the City regarding the conviction history report. The City shall provide the Applicant with an opportunity to present information rebutting the accuracy and/or relevance of the conviction history report, including information pertaining to any of the factors listed in sub-paragraph (4). The City must review all information and documentation received from the Applicant prior to taking any final action as to whether to hire said Applicant.

4. In making a determination concerning a previous criminal conviction, the City shall consider the following factors:

    (a) the nature of the crime and its relationship to the job for which the person has applied; and

    (b) the information pertaining to the degree of rehabilitation of the convicted person; and

    (c) the time elapsed since the conviction or release,

    (d) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct;

    (e) The age of the person at the time of occurrence of the criminal offense or offenses;

    (f) The gravity of the offense(s);

    (g) The public policy of this City, as expressed in this chapter, to encourage the employment of persons previously convicted of one or more criminal offenses.

5. In no case may records of conviction which have been erased be used, distributed or disseminated by the City or any of its agencies in connection with employment, except as dictated by law.

6. In order to prevent discrimination against municipal employees in accordance with federal guidelines, any information pertaining to an applicant or employee's record of conviction obtained by the Human Resources Division in conjunction with the hiring process shall remain confidential within that Division, and shall not be used, distributed or disseminated by the City or any of its agencies, to any other Division, entity, or individual, except as dictated by law.

SECTION 3. 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.

HAROLD B. COLLINS
Chairman

JANIS FULLILOVE
Council Member

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