

**Meeting Date:** 8/30/2016

**Report Type:** Consent

**Report ID:** 2016-00888

**Title: (Pass for Publication) Ordinance Establishing Ban the Box for City Contractors**

**Location:** Citywide

**Recommendation:** 1) Review an Ordinance adding Chapter 3.62 to the Sacramento City Code establishing Ban the Box for City Contractors; and 2) pass for publication the ordinance title per Sacramento City Charter Section 32(c) for consideration on September 6, 2016.

**Contact:** Dennis Kauffman, Operations Manager, (916) 808-5843; Leyne Milstein, Director, (916) 808-8491, Department of Finance

**Presenter:** None

**Department:** Finance

**Division:** Procurement Services

**Dept ID:** 06001511

**Attachments:**

- 1-Description/Analysis
- 2-Ordinance (Redline)
- 3-Ordinance (Clean)

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**City Attorney Review**

Approved as to Form  
Michael W. Voss  
8/24/2016 11:01:18 AM

**Approvals/Acknowledgements**

Department Director or Designee: Leyne Milstein - 8/24/2016 8:49:19 AM

## Description/Analysis

**Issue Detail:** “Ban the Box” is the name of an international campaign by civil rights groups and advocates for ex-offenders, aimed at persuading employers to remove from their hiring applications the check box that asks if applicants have a criminal record. Its purpose is to enable ex-offenders to display their qualifications in the hiring process before being asked about their criminal records. The premise of the campaign is that anything that makes it harder for ex-offenders to find a job makes it likelier that they will re-offend, which is bad for society. Nationwide, over 100 cities and counties have adopted “Ban the Box” legislation requiring that employers consider a job candidate’s qualifications first, without the stigma of a criminal record. The California Legislature adopted AB 218, effective July 1, 2014, which prohibits state agencies, cities and counties from asking about criminal convictions on job applications.

The proposed ordinance ensures that job applicants are provided a fair chance by City contractors by removing the conviction history question in the initial evaluation stages. It helps to ensure that employers make initial hiring and other employment decisions based on work qualification, without considering a person’s criminal record. This will require the criminal record inquiry to occur later in the hiring process.

The proposed ordinance applies to contracts of \$100,000 or more which require Council approval. The ordinance provides an exception for supply contracts and positions that are otherwise required by law to conduct criminal conviction history background checks.

**Policy Considerations:** The City believes that the ban-the-box requirement it has implemented pursuant to state law should be extended to the City’s contractors. The current hiring practice that considers applicants’ past criminal records up front is common place and can prevent many willing and qualified job seekers from securing gainful employment. The inability to obtain employment contributes to a host of problems including high rates of unemployment, recidivism and increased crime. The community at large benefits when recidivism rates decrease, and earning a living is critical for individuals to avoid re-offending.

**Economic Impacts:** Not applicable.

**Environmental Considerations:** Not applicable.

**Sustainability:** Not applicable.

**Commission/Committee Action:** The proposed ordinance was reviewed by the Law and Legislation Committee on April 19, 2016. The Committee unanimously passed a Motion approving and forwarding the ordinance to City Council for approval.

**Rationale for Recommendation:** Access to employment is key to preventing recidivism and increasing public safety in the community. The proposed “Ban the Box” ordinance would help in providing employment opportunities for people with a conviction history.

**Financial Considerations:** There are two potential financial issues to consider associated with the adoption of this ordinance. There would be staff costs resulting from the monitoring of vendors to ensure compliance with the provisions of the ordinance. The ordinance seeks to minimize this cost by requiring the vendors to self-certify. An additional potential cost could arise if a vendor, who is otherwise the lowest bidder, does not comply with the ordinance and the City has to accept a higher bid. The amount of this potential impact is unknown.

**Local Business Enterprise (LBE):** Not applicable.

**ORDINANCE NO. 2016-xxx**

Adopted by the Sacramento City Council

\_\_\_\_\_, 2016

**AN ORDINANCE ADDING CHAPTER 3.62 TO, AND AMENDING SECTION 2.40.050 OF, THE SACRAMENTO CITY CODE RELATING TO CRIMINAL CONVICTION INFORMATION IN THE EMPLOYMENT APPLICATION AND BOARD AND COMMISSION APPOINTMENT PROCESSES**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

**SECTION 1**

The health, safety, and well-being of the city are promoted by increasing access to employment for people with criminal conviction records so they may effectively reintegrate into the community and provide for their families and themselves. Employment barriers for people with criminal conviction records increase recidivism and thereby jeopardize the safety of the public; disrupt the financial and overall stability of affected families; and impede the city's ability to achieve economic growth.

In its proprietary capacity, the city awards many contracts to private businesses that provide services to the public and to the city. These businesses should provide the same access to employment opportunities for ex-offenders that the city does in order to reduce recidivism and improve economic stability in the city. The purpose of this ordinance is to prohibit entities that desire to obtain contracts with the City of Sacramento from asking criminal conviction information of employment applicants until a determination is made on their minimum employment qualifications.

**SECTION 2**

Chapter 3.62 is added to the Sacramento City Code to read as follows:

**Chapter 3.62 PROCEDURES FOR CONSIDERING CRIMINAL CONVICTION INFORMATION  
IN THE EMPLOYMENT APPLICATION PROCESS**

**3.62.010 City contract defined.**

**A. For purposes of this chapter, "city contract" means a contract awarded after January 1, 2017 to a covered employer for services or a public project in return for compensation of \$100,000 or more, including:**

1. A contract for services or a public project in an amount less than \$100,000 when awarded but that is amended to increase the total compensation to \$100,000 or more. Such a contract will be a city contract beginning on the effective date of the amendment except as provided in section 3.62.020.B.

2. A contract for services or a public project that, by itself, does not qualify as a city contract but is awarded under the following circumstances: the aggregate value of that contract and of any other contracts for services or public projects the city has awarded to the same person within the previous 12 months is \$100,000 or more. Once a contract qualifies as a city contract under this subsection, it remains a city contract until it expires or is terminated.

B. "City contract" does not include the following:

1. Contracts awarded by the city manager in response to an emergency. An emergency exists when the city manager determines that the services or public project covered by the contract must be provided immediately to safeguard life, health, or property; to permit the continued conduct of city operations or services; or to mitigate further damage.

2. Contracts for the purchase or lease of equipment, supplies, or other personal property, even if they include incidental services such as delivery, installation, or maintenance.

### **3.62.020 Covered employer defined.**

A. For the purposes of this chapter, "covered employer" means a person that is a party to a city contract and has at least 20 employees, whether full- or part-time, determined by adding the person's employees and the employees of any related person. A person is a related person when any of the following circumstances exists:

1. The person and the person that is a party to a city contract are both corporations and

a. Share a majority of members of their governing boards; or

b. Have two or more officers in common; or

c. Are controlled by the same majority shareholder or shareholders (control means more than 50% of the corporation's voting power); or

d. Are in a parent-subsidiary relationship (such a relationship exists when one corporation directly or indirectly owns shares possessing more than 50% of another corporation's voting power).

2. The person otherwise controls and directs, or is controlled and directed by, the person that is a party to a city contract, as determined by the city manager, or city manager designee.

B. A subcontractor providing services under a city contract, if the subcontractor has at least 20 employees, whether full- or part-time, or the amount of the subcontract is at least 25% of the amount of the city contract.

C. A covered employer does not include any unit of federal, state or local government.

### **3.62.030 Criminal conviction history on employment applications.**

A. Except as provided in subsection B, a covered employer shall not ask an applicant for employment to disclose, orally or in writing, information concerning the criminal conviction history of the applicant, including any inquiry about criminal conviction history on any employment application, until the employer has determined the applicant meets the minimum employment qualifications stated in any notice issued for the position.

B. This section does not apply to: (1) a position for which a covered employer is otherwise required by law to conduct a criminal conviction history background check; or (2) a position that will not involve work pursuant to a city contract.

C. This section does not prevent a covered employer from conducting a criminal conviction history background check in subsequent stages of the application process after initially determining whether the applicant meets the minimum employment qualifications.

### **3.62.040 Implementation and enforcement.**

A. Compliance with this chapter shall be required in all city contracts to which it applies, and these city contracts shall provide that violation of this chapter constitutes a material breach and authorizes the city to terminate the city contract.

B. The city may enforce this chapter as follows:

1. The city may investigate and address any alleged violation of this chapter's requirements. The city's failure to investigate an alleged violation or otherwise enforce

any of the provisions of this chapter shall not create any right of action or right to recover damages from the city by any person, including, but not limited to, an aggrieved applicant.

2. The city manager, or city manager designee, may monitor compliance with this chapter and may require covered employers to verify compliance. The city manager, or city manager designee, may take such other steps as necessary to determine whether the requirements of this chapter have been satisfied.

3. Notwithstanding any contrary provision of this code or any other ordinance, no criminal penalties attach to a violation of this chapter.

**3.62.050 Effective date.**

This chapter is effective January 1, 2017.

**SECTION 3**

Section 2.40.050 of the Sacramento City Code is amended to read as follows:

**Section 2.40.050 Background information form**

The background information required to be submitted to the city clerk shall include, but not be limited to, the following information:

- A. Name and address of employers for the five years prior to appointment;
- B. Name and address of any business enterprise currently or previously owned or operated;
- ~~C. — A statement of all felony convictions, if any, indicating for each conviction the date of conviction, the location of the court of conviction, and the exact denomination of the offense resulting in conviction;~~
- ~~C~~D. A list of each civil action, if any, in which punitive or exemplary damages have been assessed against the applicant, indicating in each instance the date of the trial court judgment and the location of the court which rendered judgment;
- ~~D~~E. A list of each fictitious business name, if any, used by the applicant at any time within the past five years.

The form required by this section shall be signed by the applicant under penalty of perjury.

**SECTION 4**

If any provision of this Ordinance or its application to any person or circumstance is held invalid or ineffective by any court of competent jurisdiction, or by reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, subdivision, sentence, clause, and phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or words be declared invalid.

Adopted by the City of Sacramento City Council on \_\_\_\_\_ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Passed for Publication:

Published:

Effective:

ORDINANCE NO. 2016-xxx

Adopted by the Sacramento City Council

\_\_\_\_\_, 2016

AN ORDINANCE ADDING CHAPTER 3.62 TO THE SACRAMENTO CITY CODE RELATING TO CRIMINAL CONVICTION INFORMATION IN THE EMPLOYMENT APPLICATION PROCESS AND AMENDING SECTION 2.40.050 OF THE SACRAMENTO CITY CODE RELATING TO CRIMINAL CONVICTION INFORMATION IN THE APPOINTMENT PROCESS FOR CITY BOARDS AND COMMISSIONS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

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IN THE EMPLOYMENT APPLICATION PROCESS

3.62.010 City contract defined.

Ordinance No.

Adopted on

A. For purposes of this chapter, "city contract" means a contract awarded after January 1, 2017 to a covered employer for services or a public project in return for compensation of \$100,000 or more, including:

1. A contract for services or a public project in an amount less than \$100,000 when awarded but that is amended to increase the total compensation to \$100,000 or more. Such a contract will be a city contract beginning on the effective date of the amendment except as provided in section 3.62.020.B.

2. A contract for services or a public project that, by itself, does not qualify as a city contract but is awarded under the following circumstances: the aggregate value of that contract and of any other contracts for services or public projects the city has awarded to the same person within the previous 12 months is \$100,000 or more. Once a contract qualifies as a city contract under this subsection, it remains a city contract until it expires or is terminated.

B. "City contract" does not include the following:

1. Contracts awarded by the city manager in response to an emergency. An emergency exists when the city manager determines that the services or public project covered by the contract must be provided immediately to safeguard life, health, or property; to permit the continued conduct of city operations or services; or to mitigate further damage.

2. Contracts for the purchase or lease of equipment, supplies, or other personal property, even if they include incidental services such as delivery, installation, or maintenance.

### 3.62.020 Covered employer defined.

A. For the purposes of this chapter, "covered employer" means a person that is a party to a city contract and has at least 20 employees, whether full- or part-time, determined by adding the person's employees and the employees of any related person. A person is a related person when any of the following circumstances exists:

1. The person and the person that is a party to a city contract are both corporations and

a. Share a majority of members of their governing boards; or

- b. Have two or more officers in common; or
  - c. Are controlled by the same majority shareholder or shareholders (control means more than 50% of the corporation's voting power); or
  - d. Are in a parent-subsiary relationship (such a relationship exists when one corporation directly or indirectly owns shares possessing more than 50% of another corporation's voting power).
2. The person otherwise controls and directs, or is controlled and directed by, the person that is a party to a city contract, as determined by the city manager, or city manager designee.
- B. A subcontractor providing services under a city contract, if the subcontractor has at least 20 employees, whether full- or part-time, or the amount of the subcontract is at least 25% of the amount of the city contract.
- C. A covered employer does not include any unit of federal, state or local government.

#### 3.62.030 Criminal conviction history on employment applications.

- A. Except as provided in subsection B, a covered employer shall not ask an applicant for employment to disclose, orally or in writing, information concerning the criminal conviction history of the applicant, including any inquiry about criminal conviction history on any employment application, until the employer has determined the applicant meets the minimum employment qualifications stated in any notice issued for the position.
- B. This section applies only to covered employers that interview applicants for employment positions that involve work on City contracts.
- C. This section does not apply to a position for which a covered employer is otherwise required by law to conduct a criminal conviction history background check.
- D. This section does not prevent a covered employer from conducting a criminal conviction history background check in subsequent stages of the application process after initially determining whether the applicant meets the minimum employment qualifications.

#### 3.62.040 Implementation and enforcement.

A. Compliance with this chapter shall be required in all city contracts to which it applies, and these city contracts shall provide that violation of this chapter constitutes a material breach and authorizes the city to terminate the city contract.

B. The city may enforce this chapter as follows:

1. The city may investigate and address any alleged violation of this chapter's requirements. The city's failure to investigate an alleged violation or otherwise enforce any of the provisions of this chapter shall not create any right of action or right to recover damages from the city by any person, including, but not limited to, an aggrieved applicant.

2. The city manager, or city manager designee, may monitor compliance with this chapter and may require covered employers to verify compliance. The city manager, or city manager designee, may take such other steps as necessary to determine whether the requirements of this chapter have been satisfied.

3. Notwithstanding any contrary provision of this code or any other ordinance, no criminal penalties attach to a violation of this chapter.

3.62.050 Effective date.

This chapter is effective January 1, 2017.

### SECTION 3

Section 2.40.050 of the Sacramento City Code is amended to read as follows

The background information required to be submitted to the city clerk shall include, but not be limited to, the following information:

A. Name and address of employers for the five years prior to appointment;

B. Name and address of any business enterprise currently or previously owned or operated;

C. A list of each civil action, if any, in which punitive or exemplary damages have been assessed against the applicant, indicating in each instance the date of the trial court judgment and the location of the court which rendered judgment;

D. A list of each fictitious business name, if any, used by the applicant at any time within the past five years.

The form required by this section shall be signed by the applicant under penalty of perjury.

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Adopted by the City of Sacramento City Council on \_\_\_\_\_ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Passed for Publication:

Published:

Effective:

Ordinance No.

Adopted on