



## AN ORDINANCE RELATIVE TO FAIR CRHI PRACTICES BY THE CITY AND ITS VENDORS

- WHEREAS,* There are over 1.5 million people in North Carolina with a criminal record. People with criminal records suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits; and
- WHEREAS,* In fiscal year 2008-09, 46% of misdemeanor convictions and 53% of felony convictions were of African Americans who only comprise 21% of the state population; and
- WHEREAS,* The disproportionate representation of African Americans in the criminal justice system, and the attendant social stigma and defacto discrimination triggered by this contact, are significant challenges to communities of color; and
- WHEREAS,* As of September, 2010, there were approximately 4,000 people in Durham County on probation or parole; in addition to the thousands who have criminal records but are not under the supervision of the NC Department of Corrections.
- WHEREAS,* People with criminal records represent a group of job seekers, ready to contribute and add to the workforce; 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 criminal records increases public health and safety by providing economic and social opportunities to a large group of people living in the City of Durham; and
- WHEREAS,* The City of Durham has focused on developing a system of screening and hiring for those with criminal backgrounds that is fair to all concerned; and
- WHEREAS,* The City contracts for goods and services with hundreds of vendors; and
- WHEREAS,* These vendors employ thousands of employees, and
- WHEREAS,* The City has a responsibility to ensure that the City and its vendors have fair polices relating to the, screening, hiring, and retaining of persons with criminal backgrounds.  
*NOW THEREFORE,*

**Be it ordained by the City Council of Durham, as follows:**

*Purpose*

This Fair CRHI Practices Ordinance is intended to encourage the full participation of motivated and qualified persons with criminal histories in our workforce, reduce recidivism, and assure public safety. The Fair CRHI Ordinance accomplishes these ends by establishing practices that:

- 1) Prohibit the use of a criminal record as an automatic bar to employment;
- 2) Prevent the use of an application form that inappropriately excludes and discriminates against qualified job applicants;
- 3) Promote the accurate use and interpretation of a criminal record; and
- 4) Provide a qualified applicant with an opportunity to discuss any inaccuracies, contest the content and relevance of a criminal record, and provide information on rehabilitation.

The following sections are intended to apply to the City of Durham and all persons and businesses supplying goods and/or services to the City of Durham and are also intended to ensure that the aforementioned parties deploy fair policies and practices in screening, hiring, and retaining persons with criminal histories.

### *Definitions*

The following words and phrases, when used in this section, shall have the following meanings:

*Applicant* - means any current or prospective employee, licensee, or volunteer.

*Awarding Authority* – means any department, agency, or office of the City of Durham that authorizes a Vendor to perform requested goods and/or services.

*City*- means the City of Durham or any department, agency, or office thereof, unless specifically excluded by this section.

*Criminal Record History Information (CRHI)* - a record of a criminal arrest, dismissal, prayer for judgment continued (PJC), or conviction.

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

*Official Data Source*—any federal, state, county, or city criminal justice agency that stores data pertaining to criminal arrests, dismissals, prayer for judgments continued (PJC), or convictions.

*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.

*Relationship to the job*—means the nature of the person's criminal conduct 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 that meets all other criteria for a position or consideration for a position.

*Vendor* – means any vendor, contractor, or supplier of goods and/or services to the city of Durham.

*CRHI-Related Standards of the City.* The CRHI-related policies, practices, and standards of the City administration include, but are not limited, to the following:

- 1) The City has a policy of affording a rehabilitated individual with a criminal record a fair opportunity to be employed and reintegrate successfully into the workforce, while protecting vulnerable populations and the public safety. Consistent with this policy, a criminal record will not automatically disqualify an Applicant from employment, unless explicitly mandated by law.
- 2) The City will not inquire into an Applicant's criminal history on any initial employment application form, unless explicitly mandated by law. All positions that require a CRHI check by law shall be made known to the public.
- 3) The City will not conduct a CRHI check or make any inquiry into an Applicant's possible criminal history until after an Applicant's credentials have been reviewed, it has determined that the Applicant is otherwise qualified for a position and a conditional offer of employment has been made. The City does not conduct a CRHI check on an Applicant that is not otherwise qualified for a relevant position.
- 4) The City will not check an Otherwise Qualified Applicant's CRHI unless a CRHI check is mandated by law or it determines that the position in question is of such sensitivity that a CRHI check is warranted.
- 5) The City and the Awarding Authority will keep a record that lists the positions that have been determined to be of such sensitivity to warrant a CRHI check.
- 6) Prior to conducting a CRHI check on an Otherwise Qualified Applicant the City must provide standard written notification to the person advising:
  - a. That a CRHI check is going to take place;
  - b. That he or she will have the opportunity to contest the accuracy and/or explain the relevance of anything on the CRHI report, and to submit evidence of rehabilitation, before the City decides to retract the conditional offer of employment; and
  - c. What kinds of specific evidence the Applicant can present on his or her behalf.
- 7) The City shall select designated reviewers within the Human Resource's department to examine all CRHI reports. Any personnel responsible for reviewing CRHI reports shall be trained on reading and interpreting CRHI. Such personnel shall be required to attend CRHI training and be knowledgeable about educational materials made available by the Administrative Office of the Courts and the State Bureau of Investigation.
- 8) The City will only receive CRHI from Official Data Sources. Moreover, the City shall not make employment decisions based on information obtained from commercial or third party CRHI data providers.
- 9) The City shall not consider arrests that did not result in a Conviction on any Applicant's CRHI report. The City will consider Convictions on an Applicant's CRHI report only in those instances where there is a substantial relationship between the Conviction and the duties and qualifications of the position in question. In making the "substantial relationship" determination the following factors should be considered:
  - a. Whether the prospective job provides an opportunity for the commission of a similar offense(s);
  - b. Whether the circumstances leading to the offense(s) will recur;
  - c. Whether the person has committed other offenses since the conviction or his conduct since conviction makes it likely that he will commit other offenses;

- d. The time elapsed since the offense(s).
- 10) The City follows the practices set forth below when it is inclined to deny an Applicant a position because of their Conviction history:
- a. Ensure that the record received pertains to the individual for whom a request was made by comparing the Applicant's identifying information, such as that on a driver's license or government issued identification, or CRHI request form, to the information on the CRHI report;
  - b. Provide the Applicant with a copy of the CRHI report prior to making any adverse determination or taking any adverse action;
  - c. Notify the Applicant of the Conviction(s) that appear to make him or her ineligible;
  - d. Provide the Applicant with a copy of the City's CRHI standards and materials that explain what information will be considered by the City in making a determination of the relevancy of an Applicant's Conviction history;
  - e. Afford the Applicant with an opportunity to contest the accuracy and/or explain the relevance of any Conviction(s), and to submit any evidence of rehabilitation, before a final decision is made about the Applicant's suitability for the position sought. The Applicant shall have ten (10) business days, after receipt of notice from the City to respond to the City regarding the CRHI report. The Applicant's opportunity to rebut may take place in the form of a private meeting or a written submission;
  - f. When a "substantial relationship" between the Conviction and the responsibilities of the position has been established the City shall review the relevancy of the Conviction(s) by considering these factors:
    - i. Nature, seriousness and circumstance of any past Conviction;
    - ii. Age of the candidate at the time of the offense(s);
    - iii. Date of the offense(s);
    - iv. Sentence imposed and length of any period of incarceration;
    - v. Any reasonable available information concerning compliance with conditions of parole or probation, including orders of no contact with victim and witnesses;
    - vi. The individual's conduct and experience in the time since the offense, including, but not limited to, education or professional certification obtained since the time of the offense;
    - vii. Any other evidence of rehabilitation.
  - g. After review, if the City finds a valid reason to refuse, rescind, or revoke the offer of a position, it will promptly notify the Applicant in writing stating the reasons thereof.
- 11) In no case may records of criminal arrests, dismissals, or Convictions which have been expunged be used, distributed or disseminated, by the City or any of its agencies, or its Vendors, in connection with employment, except as by dictated by law.
- 12) In order to prevent discrimination against City employees in accordance with federal guidelines, any CRHI pertaining to an Applicant or employee obtained by the Human Resources Department in conjunction with the hiring process shall remain confidential within that Department, and shall not be used, distributed or

disseminated, by the City or any of its agencies, or its Vendors, to any other Department, entity or individual, except as dictated by law.

#### *CRHI-Related Standards Applicable to Vendors*

- 1) The City will do business only with Vendors that have adopted and employ written CRHI related policies, practices, and standards that are consistent with the City standards set forth in the preceding section.
- 2) The City employs CRHI-related policies, practices and standards that are fair to all persons involved and seeks to do business with Vendors that have substantially similar policies and practices. The Awarding Authority shall review all Vendors' CRHI policies and practices for consistency with standards of the City as expressed in this ordinance.
- 3) All Vendors shall make their CRHI policies, practices, and standards available to any Applicant.
- 4) The Awarding Authority shall consider all Vendors' CRHI standards as part of the criteria to be evaluated in the awarding of a contract and will consider a Vendor's execution of the CRHI standards among the performance criteria in evaluating a contract.
- 5) The Awarding Authority shall consider any Vendor's deviation from the CRHI standards as grounds for rejection, rescission, revocation, or any other termination of the contract.

#### *Complaint Procedure*

- 1) Any Applicant aggrieved by an adverse decision made by the City or one of its Vendors, may file a complaint with the City Manager who shall investigate any such complaint and take any appropriate action.
- 2) The City Manager shall conduct quarterly reviews to determine City and Vendor compliance with this ordinance.
- 3) Any Awarding Authority, Vendor, Applicant, or other interested party may contact the City Manager to report any problems, concerns, or suggestions regarding the implementation, compliance, and impacts of the Fair CRHI Standards.
- 4) The City Manager shall make a report on all such complaints, investigations and reviews to the City Council on a quarterly basis.

#### *Data Collection*

- 1) The City Manager shall record and log, including maintaining demographic data, all CRHI-related complaints received.
- 2) The City Manager shall record and log the positions that have been determined to be of such sensitivity to warrant a CRHI check.
- 3) Any member of the general public may request review or copies of any record maintained by the City Manager relating to this ordinance, provided that identifying information about complainants and any other information not considered a public record are kept confidential.

- 4) The City Manager and the Awarding Authority shall collect data on the number of Otherwise Qualified applicants with criminal convictions who are hired and denied employment.

*Applicability*

To the extent permitted by law, if any provision of these sections imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, order, or policy, then the provisions of these sections shall control.

*Rulemaking Authority*

The City Manager shall have the authority to make rules necessary to implement and enforce this ordinance.

*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.

*Implementation*

The provisions of this ordinance shall apply to all City employment, bids, and requests for proposals issued after \_\_\_\_\_ 2011.

For questions or technical assistance please contact:

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