



## **Reentry Council**

### **City and County of San Francisco**

March 29, 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:

The lifelong collateral consequences of having a record of arrests and/or convictions include barriers to accessing sustainable and lawful employment, safe and affordable housing, and full participation in civic life. In our ongoing efforts to reduce such barriers, the Reentry Council of the City and County of San Francisco writes to express its strong support for amendments to the San Francisco Code, 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.

The Reentry Council's Annual Report contains two recommendations directly related to reducing unnecessary barriers to housing and employment based on arrest or conviction record.<sup>1</sup> Further, the Council's Guiding Principles include addressing structural inequalities, such as institutional racism and poverty, which may contribute to involvement in the criminal justice system.

### **Background**

The Reentry Council recognizes that the use of arrest and conviction records can help ensure public safety, as long as that use is clearly defined and balances the need for equal opportunity and personal privacy. However, criminal background checks are often overbroadly and indiscriminately used to determine the risk of hiring an employee or renting to a prospective tenant. These practices create lifelong barriers for people with arrest and conviction records who are seeking housing, employment, and other opportunities.

The impact in California is significant, given that an estimated one in four adults in California (almost 7 million Californians) has a misdemeanor or felony arrest or conviction record. The growth of the number of people in the criminal justice system coupled with the expansion of the for-profit criminal background check industry, has created a need for local limitations on the use of arrest and conviction records that go beyond current state and federal protections. Further, the disproportionate representation of African Americans and Latinos in the criminal justice system has concentrated the social and economic disadvantages in communities of color.

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.<sup>2</sup> For

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<sup>1</sup> See Reentry Council's *Annual Report* Health and Wellbeing Recommendation 5 (pg. 27) and Self Sufficiency Recommendation 2 (pg.31).

<sup>2</sup> See "Conviction History FAQ," SF Department of Human Resources, <http://sfdhr.org>.

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.<sup>3</sup>

### **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.<sup>4</sup> The Reentry Council recognizes that there may be cases which give rise to preemption. We understand that the City Attorney's Office will provide necessary analysis and advice on this and related issues prior to the development of an ordinance or related compliance guidelines.

Further, the Reentry Council 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 affected stakeholders should have an opportunity to consider how best to implement this recommendation. To that end, the Reentry Council supports all appropriate efforts to ensure that stakeholder input is obtained and meaningfully considered. The Council 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.

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<sup>3</sup> 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.

<sup>4</sup> 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).

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

### **Recommendation**

The Reentry Council 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 Council 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.<sup>5</sup>
- 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.<sup>6</sup> 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 if the conviction is substantially housing-related.

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

The Reentry Council urges the Board and Mayor to adopt an ordinance, and the Human Rights Commission to develop compliance guidelines, to effectively implement this recommendation.

Sincerely,

*Members of the Reentry Council of the City and County of San Francisco*

cc: Michael Sweet, Chair, Human Rights Commission  
Theresa Sparks, Executive Director, Human Rights Commission

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<sup>5</sup> 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.

<sup>6</sup> 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.