



Commission Agenda Report

City of Kalamazoo

TO: Mayor Hopewell, Vice Mayor Cooney, and City Commissioners
FROM: Clyde J. Robinson, City Attorney
DATE: 5/6/2016
SUBJECT: City Commission Policy Amendments

RECOMMENDATION

It is recommended that the City Commission adopt a resolution amending several of its policies to require entities 1) seeking to provide goods and services to the City in the amount of more than \$25,000; 2) that are seeking a tax abatement; or 3) an Economic Opportunity Fund (EOF) loan, to demonstrate a commitment that they do not use past criminal histories to discriminate in employment. It is also recommended that the City Commission repeal those policy provisions relating to the abatement of taxes on personal property given the changes in Michigan tax law since 2014.

Specifically, City Commission Policies Nos. 30.2 (Economic Opportunity Fund), 30.5 (Tax Abatement), and 70.7 (Ex-Offender Purchasing Policy) would be amended to require bidders on contracts over \$25,000, and companies seeking real property tax abatements or EOF loans (which include Brownfield projects) to demonstrate that they have eliminated questions regarding a job applicant's criminal history on initial employment application forms; and that they do not unlawfully discriminate against a person on the basis of his or her criminal history.

Additionally, the City Commission amendment of Policy No. 30.5 and repeal of Policy No. 30.4 (Tax Abatement Criteria) which has been subsumed by Policy 30.5, and repeal of Policy 30.6 (Personal Property Tax Exemptions) to eliminate references to personal property abatements due to the change in Michigan personal property tax law is being recommended as part of the on-going effort to update City Commission policies.

BACKGROUND

The City Commission was approached by Michigan United, a local citizen advocacy group, and asked to adopt a "Fair Chance for All" policy which would require all contractors and tax abatement candidates to "commit to nondiscrimination hiring practices" in regards to persons with a criminal history. Specifically, the proposal sought to: 1) eliminate any inquiry as to criminal history on initial job applications, and 2) conduct criminal background checks only after a conditional offer of employment had been made.

Importantly, any perception that the City Administration or the Office of the City Attorney was opposed to the Fair Chance for All proposals is unfounded. The City has, since 2008, required bidders on contracts exceeding \$25,000 to certify that they have "Banned the Box" by eliminating the criminal history question on initial job applications. However, the scope of the Michigan United proposal ostensibly impacting all city purchases no matter how small and requiring City staff and resources to investigate allegations of violations of the Fair Chance policy by non-local entities presented challenges. As the attached Resolution provides, several City Commission policies were impacted by the Michigan United request.

Following the presentation by Michigan United at the March 21, 2016 City Commission meeting, a work group consisting of the City Attorney, Assistant City Manager-Economic Development Director Jerome Kisscorni, Interim Human Resources Director Karianne Thomas, Purchasing Agent Teresa Johnson and Internal Auditor Ann Videtich was formed to consider the proposal and find workable solutions to some of the concerns which it raised. In addition to the time devoted by these administrators, whose insight and contributions were valuable to the final drafts of the policy amendments, a considerable amount of legal research was undertaken before pen was set to paper. In considering the Michigan United proposal, the work group was guided by the following principles:

- Any policy change should work to achieve the goal of eliminating a barrier to employment by ex-offenders and not be a symbolic gesture.
- The policy should not duplicate the efforts of state and federal agencies which have the resources and legal ability to cross jurisdictional lines to investigate and enforce civil rights violations.
- City should not impose a hiring practice upon entities that have no history of using criminal histories to unlawfully discriminate or where such conflicts with applicable law.

The Fair Chance for All proposal should be recognized as not being an end to itself, but a means to address unlawful discrimination through the use of past criminal histories. In this regard, Title VII of the Civil Rights Act of 1964 prohibits 1) employers from treating job applicants' criminal records differently because of race or other protected characteristics and 2) the use of criminal histories to disproportionately exclude persons of a particular race or national origin from employment. Additionally, if an employer seeks to exclude a job applicant from employment consideration, it must demonstrate that such action is, in the words of the federal courts, "job-related and consistent with business necessity." At a minimum, this showing requires that an employer consider the nature of crime, time elapsed since the criminal conduct and consideration of the job in question. It also requires that an individual excluded by a background check be provided an opportunity to challenge or provide additional information so as to demonstrate why he or she should not be excluded due to the criminal history being used by the employer. However, the United States Equal Employment Opportunity Commission guidelines do not require that an employer make a conditional offer of employment before considering criminal history background checks.

Additionally, as part of the ongoing process to update City Commission policies, consideration of the Fair Chance for All proposal provided the opportunity to review the City's tax abatement policies in light of the adoption of Proposal 1 by Michigan voters in August 2014. Passage of Proposal 1 worked a significant change on personal property taxes for businesses. It created a small business exception if a taxpayer had less than \$80,000 in

worked a significant change on personal property taxes for businesses. It created a small business exception if a taxpayer had less than \$50,000 in personal property value and beginning in 2016 started a phase out of the taxation of certain types of industrial and manufacturing equipment. The law also impacted personal property tax abatements granted under Public Act 328. Given these changes, those City Commission policies addressing the abatement of taxes on personal property are being recommended for repeal.

In sum, the policy amendments being proposed for adoption by the City Commission do the following:

- Strengthens the City's Ban the Box policy by requiring that a bidder provide a copy of its current employment application form demonstrating the absence of a criminal history inquiry;
- Requires a demonstration that a bidder or entity seeking a tax rebate or loan from the City does not use criminal histories to unlawfully discriminate and incorporates the use of the Fair Chance for All proposal as an encouraged practice;
- Would use the resources of the Michigan Department of Civil Rights and/or the United States Equal Employment Opportunity Commission to investigate allegations of employment discrimination; and
- Eliminates references to personal property tax abatements.

COMMUNITY RESOURCES CONSULTED

The proposed policy amendments were shared with representatives of Michigan United who indicated they were pleased with the proposed changes.

FISCAL IMPACT

No direct financial impact is expected to the City by adoption of these changes. However, as an economist might observe, there may be indirect costs, which are difficult to quantify. The City, by imposing employment practice conditions on those with whom it does business, may find some firms would rather not do business with the City. This *may* cause the City to have to spend more for goods and services, and it also *may* cause developers to locate projects in other local communities instead of the City. Ideally, advocacy by Michigan United for neighboring communities to adopt the same or similar policies would help level the playing field and ameliorate any perceived disadvantage by the private sector to contracting with the City of Kalamazoo.

ALTERNATIVES

None are suggested. The proposed policy changes are consistent with the City Commission's stated goal of poverty reduction. Reducing/eliminating barriers to employment to persons with a past criminal history is consistent with that goal. The proposed changes are consistent with the current state of the law as reflected in the EEOC's guidelines addressing the use of arrest and conviction records by employers.

ATTACHMENTS:

	Type	Description
☐	Resolution	Resolution
☐	Policy	Economic Opportunity Fund Guidelines
☐	Policy	Economic Opportunity Fund Guidelines - clean
☐	Policy	Tax Abatement Policy
☐	Policy	Tax Abatement Policy - clean
☐	Policy	Ex-Offender Purchasing Policy
☐	Policy	Ex-Offender Purchasing Policy - clean