

ORDINANCE NO. O-2020-__

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, PERTAINING TO CRIMINAL HISTORY SCREENING PRACTICES FOR APPLICANTS SEEKING EMPLOYMENT WITH THE CITY OF TAMARAC AND ITS CONTRACTORS, EFFECTIVELY "BANNING THE BOX;" CREATING SECTION 2-245 OF THE CITY OF TAMARAC CODE OF ORDINANCES ENTITLED "CONVICTION HISTORY PROHIBITION IN CITY EMPLOYMENT AND BY CITY CONTRACTORS"; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the National Employment Law Project estimates that 70 million American adults have arrests or convictions in their past that can impact their ability to obtain employment; and

WHEREAS, the ability of individuals with criminal records to successfully reintegrate into their communities contributes to reduced recidivism, strengthens families, and leads to safer communities; and

WHEREAS, research studies have effectively shown that securing stable employment and income is a significant factor for individuals with criminal histories to attain successful reintegration into their communities; and

WHEREAS, according to the Equal Employment Opportunity Commission, many arrests do not lead to criminal charges, nor are they proof that a criminal activity has occurred; and

WHEREAS, placing questions regarding criminal history on an employment application can create a chilling effect that discourages individuals with criminal records from applying for positions for which they may be qualified and where their prior convictions may not have any relevance to the position; and

WHEREAS, as of 2019, such "Ban the Box" policies have been passed and implemented in 35 U.S. states and over 150 cities and counties across the nation including: Broward County, Miami Dade County, Palm Beach County, Jacksonville Tallahassee, Tampa, St. Petersburg, Pompano Beach, Gainesville, Orlando, Clearwater, Daytona Beach, Ft. Myers, and Sarasota; and

WHEREAS, a number of major corporations including Bed Bath & Beyond, Home Depot, Target, Walmart, American Airlines, Coca-Cola, Facebook, Google, Dropbox, PepsiCo, Starbucks, Uber, Under Armour and Plank Industries, Unilever, Xerox and more also understand the value of banning the box and have implemented such policies; and

WHEREAS, the National League of Cities and the National Association of Counties have highlighted such policies and other local models that facilitate reentry for individuals with criminal records; and

WHEREAS, in 2012 the Equal Employment Opportunity Commission, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., released best standards and practices guidelines that employers should adopt with inclusive policies that advise employers to make individualized assessments instead of blanket exclusions, consider the years passed since the offense and relevance to the job, and recognize that background checks may contain errors and therefore allow candidates to review the results; and

WHEREAS, all people should have a fair chance to compete for employment opportunities; and

WHEREAS, eliminating questions concerning an applicant's criminal history from the City or its' contractors would not impact the City or contractor's ability to make informed

decisions because the City and its' contractors would still be able to review the criminal history information obtained from the applicant's background check after the applicant has been selected as a finalist for a position; and

WHEREAS, the City Commission of the City of Tamarac has determined that amending the Code to "ban the box" is in the best interests of the individual and corporate citizens of the City of Tamarac.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, THAT:

SECTION 1: The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2: The City Commission of the City of Tamarac hereby amends Chapter 2 of the City's Code Of Ordinances, entitled "Administration", specifically amending Article IV, entitled "Department", by creating a new Division 3 to be entitled "Human Resources"; adding Section 2-245, to be entitled "Conviction History Prohibition in City Employment and by City Contractors", to read as follows:

Chapter 2 Administration;
Article IV – Department;
Division 3. Human Resources

Sec. 2-245. Conviction History Prohibition in City Employment and by City Contractors

(a) Definitions.

The definitions in this section apply throughout this section unless the context clearly requires otherwise.

(1) "Criminal record" means any record about a citation or arrest for criminal conduct, including records relating to probable cause to arrest, and includes any record

about a criminal or juvenile case filed with any court, whether or not the case resulted in a finding of guilt.

(2) "Contractor" means any person or business that contracts to perform work or services, or provides goods or supplies to the City.

(3) "City" means City of Tamarac.

(4) "Otherwise qualified" means that the applicant meets the basic criteria for the position as set out in the advertisement or job description without consideration of a criminal record.

(b) Considering Conviction History in Employment Decisions.

(1) The policy of the City is that it will not include any question on any application for employment, inquire either orally or in writing, receive information through a criminal history background check, or otherwise obtain information about an applicant's criminal record until after the City initially determines that the applicant is otherwise qualified for the position. Once the City has initially determined that the applicant is otherwise qualified, the City may inquire into or obtain information about a criminal record.

(2) The policy of the City is that it will not advertise employment openings in a way that excludes people with criminal records from applying.

(3) The policy of the City is that it will not implement any policy or practice that automatically or categorically excludes individuals with a criminal record from consideration prior to an initial determination that the applicant is otherwise qualified for the position. Prohibited policies and practices include rejecting an applicant for failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified for the position.

(4) This section does not apply to:

(i) The City hiring a person who will or may have unsupervised access to children under the age of eighteen, a vulnerable adult as defined in § 415.102, Florida Statutes, as may be amended from time to time, or a vulnerable person as defined in § 1.01, Florida Statutes, as may be amended from time to time.

(ii) The City, where expressly permitted or required under any federal or state law to inquire into, consider, or rely on information about an applicant's or employee's criminal record for employment purposes;

(iii) The City is seeking employment for any position related to general or limited authority law enforcement personnel; or

(iv) The City is seeking a nonemployee volunteer.

(c) Bargaining Positions

This section may not be construed to interfere with, impede, or in any way diminish any provision in a collective bargaining agreement.

(d) City Contractors

(1) The City encourages contractors that do business with the City to adopt and employ conviction history policies, practices, and standards that are consistent with City standards outlined in this chapter.

(2) During the procurement process, the City can review all contractors' conviction history policies for consistency with City standards. The contractors' conviction history standards can be part of the criteria to be evaluated by the City when determining whether to award a City contract. Further, the City will be able to evaluate a contractor's execution of the conviction history standards as a part of the performance criteria of said City contract(s). The City can, if it so chooses, consider these conviction history standards when considering all City contracts.

(e) Compliance with Laws

(1) This section may not be interpreted or applied to diminish or conflict with any requirements of state or federal law, including, but not limited to, Title VII of the civil rights act of 1964; the federal fair credit reporting act, 15 U.S.C. Sec. 1681; and state laws regarding unsupervised access to children or vulnerable persons.

(2) This section may not be interpreted or applied as imposing an obligation on the part of the City or contractors to provide accommodations or job modifications in order to facilitate the employment or continued employment of an applicant or employee with a criminal record or who is facing pending criminal charges.

(3) This section may not be construed to create a private right of action to seek damages or remedies of any kind. This section does not create any additional liability for the City beyond that enumerated in this section. A person who claims that he or she has been a victim of a violation of this section may file a written complaint with the City of Tamarac City Manager's Office.

SECTION 3: It is the intention of the City Commission of the City of Tamarac, Florida that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Tamarac, Florida, and that the Sections of this

Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or such other word or phrase in order to accomplish such intention.

SECTION 4: If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the remaining portions or applications remaining in full force and effect.

SECTION 5: All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 6: This Ordinance shall become effective immediately upon adoption.

PASSED, FIRST READING this _____ DAY OF _____, 2020.

PASSED, SECOND READING this _____ DAY OF _____, 2020.

BY: _____
MAYOR MICHELLE J. GOMEZ

ATTEST

_____	RECORD OF COMMISSION VOTE: 1ST Reading	
JENNIFER JOHNSON, CMC	MAYOR GOMEZ	_____
CITY CLERK	DIST 1: V/M BOLTON	_____
	DIST 2: COMM. GELIN	_____
	DIST 3: COMM. FISHMAN	_____
	DIST 4: COMM. PLACKO	_____

RECORD OF COMMISSION VOTE: 2ND Reading

MAYOR GOMEZ	_____
DIST 1: V/M BOLTON	_____
DIST 2: COMM. GELIN	_____
DIST 3: COMM. FISHMAN	_____
DIST 4: COMM. PLACKO	_____

I HEREBY CERTIFY that
I have approved this
ORDINANCE as to form

SAMUEL S. GOREN
CITY ATTORNEY