



# City of Philadelphia

City Council  
Chief Clerk's Office  
402 City Hall  
Philadelphia, PA 19107

**BILL NO. 070684**

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**Introduced September 20, 2007**

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**Councilmember Miller**

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**Referred to the  
Committee on Commerce and Economic Development**

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## **AN ORDINANCE**

Amending Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," by enacting a new Chapter 17-1500, entitled "Philadelphia Fair Criminal Record Standard," requiring a fair standards of criminal record screening within the City of Philadelphia, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," is hereby amended by adding a new Chapter 17-1500, entitled "Philadelphia Fair Criminal Record Screening Standard," to read as follows:

CHAPTER 17-1500. PHILADELPHIA FAIR CRIMINAL RECORD SCREENING STANDARD.

§ 17-1501. Purpose.

This chapter shall be known as the "Philadelphia Fair Criminal Record Screening Standard." The purpose of the chapter is to ensure that the City of Philadelphia, the persons and businesses supplying goods and/or services to the City, and the persons and businesses that receive financial assistance from the City deploy fair practices relating to the screening and identification of persons with criminal backgrounds. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers for the purpose of promoting economic development and job growth. Such public expenditures should only be provided to persons and business that have fair policies relating to the screening and identification of persons with criminal backgrounds. The City Council of Philadelphia finds that the use of City funds to avoid unfair criminal background screening practices will greatly enhance the employability of ex-offenders who have paid their debt to society and who will safely and

# City of Philadelphia

*BILL NO. 070684 continued*

honestly work in jobs that allow them to provide for themselves and their families. The new standard is based on ordinances recently enacted by the Cities of Boston and Cambridge, Massachusetts, as well as the City of Philadelphia's 21<sup>st</sup> Century Minimum Wage Standard.

§ 17-1502. Definitions. The following words and phrases whenever used in this chapter shall be construed as defined in this section:

- (1) "City." The City of Philadelphia and all City agencies.
- (2) "City financial aid recipients." All persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, tax incentives, in-kind services, waivers of City fees, or real property in the amount of more than \$ 100,000 in any twelve (12)-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.
- (3) "Service Contractor." Any person or entity that enters into a Service Contract as hereinafter defined.
- (4) "Applicant." Any person considered for hire by a covered Employer on a full-time, part-time, temporary, or seasonal basis, including employees, temporary workers, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.
- (5) "Employer." Those persons with more than five (5) employees, except that no person shall be deemed an Employer until they receive a new contract, lease, concession, franchise, or financial aid from the City. For these purposes the term "new" includes any arrangement entered into after this Chapter becomes effective, or any amendment, extension or renewal of a preexisting arrangement.
- (6) "Non-profit." A non-profit organization described in Section 501(c) of the Internal Revenue Code of 1954, as amended, which is exempt from taxation under Section 501(c) of that code.
- (7) "Office of Labor Standards." Such office as shall be designated by the Mayor to administer the provisions of this Chapter.
- (8) "Person." Any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

# City of Philadelphia

*BILL NO. 070684 continued*

(9) “Service contract.” A contract given to an employer by the City for the furnishing of services to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities. A subcontract shall be considered a “Service Contract” if it assists in performance of a Service Contract or accepts or transfers any right or responsibility set forth in a Service Contract as defined in this Chapter.

§ 17-1503. Employers Subject to the Requirements of this Chapter. The employers described below shall comply with the fair criminal record screening standards established by this Chapter.

(1) The City of Philadelphia, including all its agencies, departments and offices.

(2) For-profit Service Contractors, which receive or are subcontractors on contract(s) for \$10,000 or more from the City in a twelve-month period, with annual gross receipts of more than \$ 1,000,000.

(3) Non-profit Service Contractors, which receive or are subcontractors on contract(s) from the City of more than \$ 100,000 in a twelve-month period.

(4) Recipients of City leases, concessions, or franchises, or subcontractors thereof, which employ more than twenty-five (25) employees.

(5) City financial aid recipients. Compliance shall be required for a period of five (5) years following receipt of aid.

(6) Public agencies, which receive contract(s) for \$ 10,000 or more from the City in a twelve-month period.

§ 17-1504. Fair Criminal Record Screening Standard.

An Employer subject to this Chapter shall conduct criminal record checks as follows.

(1) The Employer does not conduct a criminal record check on an Applicant unless a criminal record check is required by law or the Employer has made a good faith determination that the relevant position is of such sensitivity that a criminal record report is warranted.

(2) The criminal record check is conducted through the Pennsylvania State Police, not criminal court records.

(3) The Employer reviews the qualifications of an Applicant and determines than an Applicant is otherwise qualified for the relevant position before the Employer conducts a

# City of Philadelphia

*BILL NO. 070684 continued*

criminal record check. The Employer does not conduct a criminal record check for an Applicant that is not otherwise qualified for a relevant position.

(4) The Employer does not consider criminal record information other than conviction and case pending information. It will not consider cases disposed favorably for the Applicant, such as Not Guilty or Dismissal.

(5) If the Employer is inclined to refuse, rescind, or revoke the offer of a position to an Applicant, then the Employer notifies the Applicant of the potential adverse employment action, provides the Applicant with a photocopy of the criminal record report received by the Employer, informs the Applicant of the specific parts of the criminal record report that concern the Employer, provides an opportunity for the Applicant to discuss the criminal record report with the Employer including an opportunity for the Applicant to present information rebutting the accuracy and/or relevance of the criminal record report, reviews any information and documentation received from the Applicant, and documents all steps taken to comply with these reports.

(6) The Employer makes final employment-related decisions based on all of the information available to the Employer, including the seriousness of the crime(s), the relevance of the crime(s), the number of crime(s), the age of the crime(s), and the occurrences in the life of the Applicant since the crime(s). If the final decision of the Employer is adverse to the Applicant and results in the refusal, rescission, or revocation of a position with the Employer, then the Employer promptly notifies the Applicant of the decision and the specific reason(s) therefore.

§ 17-1505. Waivers.

The Office of Labor Standards may grant a partial or total waiver of these requirements, pursuant to the following:

(1) Any Employer which contends that it is unable to comply with the fair criminal record screening standard must provide a detailed explanation in writing to the City.

(2) The explanation must set forth the reasons for an Employer's inability to comply with the provisions of this Chapter.

(3) The City may grant a waiver only upon a finding and determination that the employer has demonstrated that waiver will further the interests of the City.

(4) Waivers from the chapter are disfavored and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver.

# City of Philadelphia

*BILL NO. 070684 continued*

(5) If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year, the employer may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(6) Notwithstanding any other provision of this Section to the contrary, the City reserves the right to waive the requirements of this Chapter upon a finding and determination that a waiver is in the best interests of the City.

(7) All of the provisions of this Chapter, or any part hereof, may be waived by a bona fide collective bargaining agreement.

## § 17-1506. Data Collection and Report.

Any Employer, Applicant, or other interested party may contact the Office of Labor Standards to report any problems, concerns, or suggestions regarding the implementation, compliance, and impacts of these sections, and the Office of Labor Standards shall log every comment received with a summary of the comment and shall keep on file any written comments. The Office of Labor Standards shall prepare a written report including, but not limited to, a summary of the granted waivers, a summary of any feedback regarding criminal record-related policies and/or practices, and any other information or analysis deemed noteworthy by the Director of the Office of Labor Standards. The Office of Labor Standards shall file the report with the Philadelphia City Council via the Office of the Chief Clerk every twelve (12) months from the implementation date of these sections.

## § 17-1507. Required Contract Provisions.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid (collectively “contract” or “agreement”) with an employer described in this Chapter or amendment thereto shall contain provisions requiring the employer to comply with the requirements of this Chapter as they exist on the date when the employer entered into its agreement with the City or when such agreement is amended. Such agreement provisions shall require the employer to promptly provide to the City documents and information verifying its compliance with the requirements of this Chapter, and provide for sanctions for non-compliance.

## § 17-1508. Exemptions.

(1) An Employer or Applicant for whom application of the requirements of this Chapter is preempted by state or federal law.

# City of Philadelphia

*BILL NO. 070684 continued*

## § 17-1509. Retaliation and Discrimination Prohibited.

It shall be unlawful to retaliate or discriminate against any person on account of his having claimed a violation of this Chapter.

## § 17-1510. Private Right of Action.

(1) A person aggrieved by a violation of this Chapter may bring an action against an employer and obtain the following remedies:

(a) Back pay for lost wages caused by the employer's violation of this Chapter.

(b) Reinstatement, compensatory damages and punitive damages, to the extent such punitive damages are permitted by law.

(c) Reasonable attorney's fees and costs.

(2) Notwithstanding any provision of this Chapter or any other ordinances to the contrary, no criminal penalties shall attach for any violation of this Chapter.

(3) No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law.

(4) Nothing in this Chapter shall be interpreted to authorize a claim for damages against the City based upon another employer's failure to comply with this Chapter.

## § 17-1511. Responsible Bidding and Use of City Funds.

Prior to commencement of the contract's term or execution by the City, each Contractor covered by the bill's requirements will certify to the satisfaction of the City that its Applicants' criminal records are screened consistent with this Chapter. As part of any bid, application or proposal for any agreement or contract, or other funding arrangement with the City covered by this Chapter, the submitter shall include an acknowledgment, in a form acceptable to the City, of the terms of this Chapter and intent to comply therewith.

## § 17-1512. Fair Criminal Record Screening Advisory Committee.

(1) Establishment. The City Council shall establish a nine (9) person committee entitled the "Fair Criminal Record Screening Advisory Committee," the purpose of which shall be to review the implementation and effectiveness of this Chapter and to make recommendations to the City Council regarding this Chapter.

# City of Philadelphia

*BILL NO. 070684 continued*

(2) Members. The Committee shall be composed of nine (9) members, composed of representatives of the ex-offender community, labor and businesses, appointed by the City Council, provided that no more than four (4) members are members of the business community. No members of the Committee shall be city contractors, affected employers, or city employees except that at least one (1) member must be appointed to represent the Office of Labor Standards.

(3) Meetings. The Committee shall meet at least quarterly. All meetings shall be open to the public and will allow for public testimony on policies or conduct relating to this Chapter.

## SECTION 2. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance, or the application of such provision to persons or circumstances other than those as to which it is held invalid. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

## SECTION 3. Effective Date.

This Ordinance shall become effective immediately.

# City of Philadelphia

*BILL NO. 070684 continued*