

Your Committee, to which this proposal was referred, has amended the proposal to read as follows and recommends its adoption as amended.

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CITY COUNTY COUNCIL

PROPOSAL NO. 4, 2014

CITY OF INDIANAPOLIS-MARION COUNTY, INDIANA

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INTRODUCED: 01/27/2014

REFERRED TO: Public Safety and Criminal Justice Committee

SPONSOR: Councillors Osili, Moriarty Adams and Barth

DIGEST: amends the Code by adding a new Chapter 671 regarding the employment of ex-offenders

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**SOURCE:**

Initiated by: Councillor Osili

Drafted by: Fred Biesecker, General Counsel

**LEGAL REQUIREMENTS FOR ADOPTION:**

Subject to approval or veto by Mayor

**PROPOSED EFFECTIVE DATE:**

Adoption and approvals

GENERAL COUNSEL APPROVAL: \_\_\_\_\_

Date: January 23, 2014

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CITY-COUNTY GENERAL ORDINANCE NO. , 2014

A PROPOSAL FOR A GENERAL ORDINANCE amending the Revised Code of the Consolidated City and County by adding a new Chapter 671 regarding employment of ex-offenders.

WHEREAS, approximately 5,000 men and women are released into Marion County from prisons and jails every year; and

WHEREAS, during the last few years, approximately 51% of those released into Marion County have returned to incarceration within three years of their release date; and

WHEREAS, the average annual cost for an incarcerated offender is more than \$25,000; and

WHEREAS, reducing the rate of recidivism would have significant economic and public safety benefits in addition to increasing the number of productive members of our community; and

WHEREAS, "BAN THE BOX" is a national movement with the goal of increasing employment opportunities for individuals with prior criminal convictions by removing questions regarding prior criminal history from employment applications; and

WHEREAS, hiring practices that consider the past criminal history of applicants without a justifying business necessity can prevent willing and qualified job applicants from obtaining gainful employment; and

WHEREAS, research shows that the lack of employment is a significant cause of recidivism, that employed individuals are less likely to be re-arrested, and that the age of the offender at the time of offense and the length of time since that offense are important factors to consider because likelihood of re-offense diminishes significantly almost to that of the general population, and sometimes below that of the general population, after less than eight years for almost all types of non-violent offenses; and

WHEREAS, many cities throughout the United States, including Boston, Chicago, Minneapolis, St. Paul, San Francisco, and Philadelphia have adopted new employment applications in support of the "BAN THE BOX" initiative; and

WHEREAS, the Consolidated City of Indianapolis and Marion County (City) is committed to ensuring that all qualified individuals seeking employment within the City should be given an equal opportunity to apply for available positions; and

WHEREAS, the City believes that providing an equal opportunity includes extending employment opportunities to qualified individuals who have been released from incarceration and are rebuilding their lives; and

WHEREAS, the City has the obligation to act as a model employer, not only employing individuals with prior convictions itself, but promoting this to the private sector as well; and

WHEREAS, the City engages in contracts with numerous vendors ~~and provides economic incentives to numerous recipients~~, who in turn employ hundreds of individuals/employees; and

WHEREAS, the City has the responsibility to ensure that the vendors it engages for contracts ~~and the recipients of economic incentives~~ have fair policies, practices and standards relating to the screening and identification of individuals with prior criminal convictions; and

WHEREAS, it is the intent and purpose of this ordinance to ensure that the City and the vendors it engages for contracts ~~and the recipients of economic incentives~~ implement just and fair measures and practices when screening and identifying eligible individuals for employment, regardless of whether they have prior convictions or arrests; and

WHEREAS, the City recognizes that State and/or federal laws may require criminal background investigations for certain positions, including positions that involve work with children, positions in law enforcement, and other sensitive positions; and

WHEREAS, the City recognizes that its vendors ~~and recipients of economic incentives~~ will have to continue to comply with State and/or federal laws in conducting required and necessary background investigations, while also balancing the interest in providing opportunities for employment to those who have prior convictions in positions in which there are no statutory prohibitions against employment; and

WHEREAS, it is the intent and purpose of this ordinance to assist in the successful reintegration of formerly incarcerated individuals into the community by removing the barriers to gainful employment; and

WHEREAS, it is the intent and purpose of this ordinance to refrain from and eliminate hiring policies, practices and standards that artificially limit an applicant pool by discouraging individuals with prior convictions from applying for employment; now, therefore:

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE  
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The Revised Code of the Consolidated and County is hereby amended by adding a new Chapter 671, to read as follows:

CHAPTER 671 – EMPLOYMENT OF EX-OFFENDERS

**Sec. 671-101. Definitions**

As used in this Chapter the following terms have the following meanings:

(1) "Applicant" means any person considered or who requests to be considered for employment by a City or County agency or vendor or recipient of an economic incentive.

(2) "City or County agency" means ~~the City, or any City~~ any office, department, agency, board or commission of the Consolidated City of Indianapolis and Marion County.

(3) "Employee" means all persons engaged in the operation or conduct of any business, whether as owner, any member of owner's family, partner, associate, agent, manager, or representative, and any and all other persons engaged or employed in said business.

(4) "Employment" means any occupation, vocation, job, work for pay or employment, 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. "Employment" shall not, for the purposes of this Chapter, include membership in any law enforcement agency.

(5) "Conviction" means any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation or a sentence of unconditional discharge.

(6) "Inquiry" means any direct or indirect conduct intended to gather information, using any mode of communication.

(7) "Interview" means any direct contact by the employer with the applicant, whether in person or by telephone, to discuss the employment being sought or the applicant's qualifications.

(8) "License" means any certificate, license, permit, authorization or grant of permission required by the City as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. "License" shall not, for the purposes of this Chapter, include any license, authorization or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(9) "Vendor" means any person or entity which employs the equivalent of ten (10) or more full-time employees in its total workforce and which holds or enters into a contract with a City or County agency.

~~(10) "Recipient" means any individual, partnership, association, organization, corporation, or other entity, whether public or private, which is currently located in Marion County, and which receives an economic incentive.~~

~~(11) "Economic Incentive" means any of the following benefits:~~

- ~~a. Grants or loans of tax increment funds, including bond sale proceeds;~~
- ~~b. Real property tax abatement;~~
- ~~c. Personal property tax abatement;~~
- ~~d. Economic development revenue bonds and proceeds;~~
- ~~e. Loans and loan guarantees;~~
- ~~f. General obligation bonds and proceeds;~~
- ~~g. Certified technology parks;~~
- ~~h. Income tax adjustments, deductions and exemptions;~~
- ~~i. Cash transfers;~~
- ~~j. Transfers of real or personal property not made at fair market value; and~~
- ~~k. Any other form of public financing that lowers the project cost to the Recipient.~~

**Sec. 671-102. Ban-the-Box**

In connection with printed and/or on-line employment application forms of a City **or County** agency or vendor ~~or recipient of an economic incentive~~, it shall be an unlawful discriminatory practice for them to contain a "Box" or inquiry regarding an applicant's prior criminal history.

**Sec. 671-103. Unlawful Discriminatory Practice - Arrestees**

To prohibit unfair discrimination against persons previously arrested for one or more criminal offenses:

In connection with the licensing or employment of any person, it shall be an unlawful discriminatory practice for a City **or County** agency or vendor ~~or recipient of an economic incentive~~ to make any inquiry about or to take any adverse action against any person on the basis of any arrest or criminal accusation made against such person, which is not then pending against that person and which did not result in a conviction. It shall further be an unlawful discriminatory practice for a City **or County** agency or vendor ~~or recipient of an economic incentive~~ to require any person to disclose or reveal any arrest or criminal accusation made against such person which is not then pending against that person and which did not result in a conviction.

**Sec. 671-104. Unlawful Discriminatory Practice – Ex-Offenders**

To prohibit unfair discrimination against persons previously convicted of one or more criminal offenses:

(a) In connection with the licensing or employment of any person, it shall be an unlawful discriminatory practice for a City **or County** agency or vendor ~~or recipient of an economic incentive~~ to make any inquiry regarding or to require any person to disclose or reveal any criminal convictions during the application process. The application process shall begin when the applicant inquires about the employment being sought and shall end when an employer has accepted an employment application.

(b) It shall further be an unlawful discriminatory practice for a City **or County** agency or vendor ~~or recipient of an economic incentive~~ to make any inquiry regarding, or to require any person to disclose or reveal any criminal convictions against such person before and during the first interview. If an employer does not conduct an interview, that employer is prohibited from making any inquiries or gathering any information regarding the applicant's criminal convictions. If the applicant voluntarily discloses any information regarding his or her criminal convictions at the interview, the employer may discuss the criminal conviction disclosed by the applicant.

**Sec. 671-105. EEOC Guidelines**

It is the policy of the City to provide equal employment opportunities for qualified individuals without discrimination. Under federal law, the Equal Employment Opportunity Commission ("EEOC") prohibits the use of criminal records as a measure to exclude an applicant from employment without considering the following four (4) factors:

- (1) whether the applicant committed the offense (if only an arrest);
- (2) the nature and gravity of the offense;
- (3) the time since the offense; and,
- (4) the nature of the job for which the applicant has applied.

In accordance with EEOC guidelines, any City **or County** agency or vendor ~~or recipient of an economic incentive~~ shall consider the above factors when deciding to offer employment to an applicant with a prior criminal conviction(s).

**Sec. 671-106. City Contracts and Economic Incentives**

(a) The City shall only conduct business with vendors ~~and recipients of economic incentives~~ that have adopted and implemented policies, practices and standards, regarding an applicant's prior

criminal history, that are consistent with the City's policies, practices and standards, except where state and/or federal laws may require criminal background investigations for certain positions, including positions that involve work with children, positions in law enforcement, and other sensitive positions.

(b) The party responsible for awarding City contracts ~~and economic incentives~~ shall review all vendors' policies, practices and standards for the hiring of applicants with prior criminal convictions to ensure that the vendors' practices, policies and standards are consistent with the City's policies, practices and standards.

(c) The vendors' policies, practices and standards on employing applicants with prior criminal convictions shall be made a part of the criteria to be considered by the City when awarding contracts and economic incentives.

**Sec. 671-107. Exemptions**

(1) An employer hiring for positions where certain convictions or violations are a bar to employment in that position under state or Federal law, shall not be constrained from asking questions about those convictions or violations.

(2) An employer hiring for licensed trades or professions, including positions such as interns and apprentices for such licensed positions, may ask applicants the same questions asked by the trade or professional licensing body, in accordance with state law.

(3) The prohibitions of this Chapter shall not apply if the inquiries or adverse actions prohibited herein are specifically authorized by any other applicable law.

**Sec. 671-108. Enforcement**

(a) Each violation of this Chapter shall be punishable as provided in Section 103-3 of the Code.

(b) The City shall keep a record of all violations of the application provisions established by this Chapter. A history of violation of this Chapter's provisions shall be a factor which is considered by the City when deciding upon any future awards of contracts ~~or economic incentives~~ to the affected employer and may form the basis for denying any future contracts ~~or economic incentives~~ to the affected employer.

(c) The Mayor's office or such other office or agency as the Mayor shall designate, shall administer and enforce this Chapter and shall make a report on all such complaints, investigations and reviews to the City-County Council on a quarterly basis.

SECTION 2. In the event any provision (s) of this ordinance is held to be invalid by a court of competent jurisdiction, such provision (s) shall have no force or effect on the remaining provisions.

SECTION 3. This ordinance shall be in full force and effect from and after 90 days after adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this \_\_\_\_\_ day of \_\_\_\_\_, 2014, at \_\_\_\_\_ p.m.

ATTEST:

\_\_\_\_\_  
Maggie A. Lewis  
President, City-County Council

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NaTrina DeBow  
Clerk, City-County Council

Presented by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2014, at 10:00 a.m.

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NaTrina DeBow  
Clerk, City-County Council

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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Gregory A. Ballard, Mayor