

## **Proposal to Add Anti-Discrimination Language to Seattle’s Municipal Code Regarding People with Arrest and Conviction Records**

### **Definitions**

“Arrest” means information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

"Conviction" means an adjudication of guilt that includes a verdict of guilty, a finding of guilty, and/or acceptance of a plea of guilty.

"Discrimination," and/or "discriminate," means any act, by itself or as part of a practice, which is intended to or results in different treatment or differentiates between or among individuals or groups of individuals due to the existence of an arrest or conviction record.

"Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform the duties or responsibilities of the job in employment situations and the ability to carry out the duties or responsibilities of occupancy or tenancy in the case of housing.

“Vacated” refers to an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

### **Unfair Employment Practices**

It is unfair employment practice within the city for any:

Employer, employment agency, or labor organization to deny employment or carry out an adverse action due to an employee or applicant’s arrest record or other criminal record if the arrest or charge did not lead to a conviction of a crime.

Employer, employment agency, or labor organization to deny employment or carry out an adverse action due to an employee or applicant’s conviction record that has been vacated or when a juvenile record has been sealed.

Employer, employment agency, or labor organization to deny employment or carry out an adverse action due to an employee or applicant’s conviction record when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses except as follows in **Exclusions from unfair practices**.

### **Exclusions from Unfair Practices**

The provisions above, insofar as they declare discrimination on the basis of a conviction record, do not apply to:

1. Situations where there is a direct relationship between the conviction and the employment sought or held by the individual.
2. Situations where the granting or continuation of employment would involve unreasonable risk of substantial harm to property or to the safety of individuals or the public.
3. Positions working with children, developmentally disabled persons and vulnerable adults when there is a conviction record as described in RCW 43.43.830, including findings of domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law. This does not prohibit use of a certificate of rehabilitation as described in RCW43.43.830.
4. Law enforcement agencies.
5. Situations where an employer must comply with any federal or state law or regulation pertaining to background checks.
6. The right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.

### **Unfair Housing Practices**

It is an unfair practice for any landlord, housing provider or seller to deny occupancy or carry out an adverse action due to a tenant's, applicant's or a member of the tenant's or applicant's household's arrest record or other criminal records if the arrest or charge did not lead to a conviction of a crime.

It is an unfair practice for any person to discriminate by denying occupancy or carrying out an adverse action based solely on a conviction record of the tenant's, applicant's or a member of the tenant's or applicant's household when the conviction record has been vacated or when a juvenile record has been sealed.

It is an unfair practice for any person to discriminate by denying occupancy or carrying out an adverse action due to a tenant's, applicant's or a member of the tenant's or applicant's household's conviction record when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses except as follows in **Exclusions- Unfair Housing Practices**.

### **Unfair Inquiries or Advertisements**

It is an unfair practice for any person to:

Publish, print, circulate, issue or display or cause to be published, printed, circulated, issued or displayed, any communication, notice, advertisement, or sign of any kind relating to a real estate transaction or listing of real property which indicates directly or indirectly an intention to make any preference, limitation or specification based on the existence of an arrest or conviction record.

### **Exclusions – Unfair Housing Practices**

Nothing in the sections above relating to unfair housing practices shall prohibit discrimination on the basis of a conviction record in:

1. Situations where there is a direct relationship between the conviction and occupancy;
2. Situations where occupancy would involve unreasonable risk of substantial harm to property or to the safety of individuals or the public.

The provisions above, insofar as they declare discrimination on the basis of a conviction record, do not apply to any right a landlord, housing provider or seller may have with respect to an intentional misrepresentation in connection with an application for occupancy made by a prospective occupant or previously made by an occupant.

### **Contracting**

It is prohibited for any employer, employment agency, or labor organization to deny a contract or carry out an adverse action due to a person's arrest record or other criminal records if the arrest or charge did not lead to a conviction of a crime.

It is prohibited for any employer, employment agency, or labor organization to deny a contract or carry out an adverse action due to a person's conviction record that has been vacated or when a juvenile record has been sealed, except as follows in **Exclusions from unfair practices**.

### **Exclusions from Unfair Practices – Contracting**

The provisions **above**, insofar as they declare discrimination on the basis of arrest and conviction record, do not apply to:

1. Situations where there is a direct relationship between the conviction and the contract sought or held by the individual.
2. Situations where the granting or continuation of the contract would involve unreasonable risk of substantial harm to property or to the safety of individuals or the public.
3. Contracts involving working with children, developmentally disabled persons and vulnerable adults when there is a conviction record as described in RCW 43.43.830, including findings of domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or

exploitation or financial exploitation of a child or vulnerable adult under any provision of law. This does not prohibit use of a certificate of rehabilitation as described in RCW43.43.830.

4. Law enforcement agencies.

5. Situations where the contracting parties must comply with any federal or state law or regulation pertaining to background checks.

6. The right an employer may have with respect to an intentional misrepresentation in connection with an application made by a prospective contractor or previously made by a current contractor.

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## **Rules**

The draft rules below provide guidance for the public and the Seattle Office for Civil Rights in how the proposed ordinance would be enforced.

### **Relating to Exclusions – Unfair Employment Practices**

1. Examples of situations where there may be a direct relationship between the conviction and the employment sought or held by the individual include but are not limited to:

- a. Positions handling money and convictions of theft (1<sup>st</sup> and 2<sup>nd</sup> degree).
- b. Positions involving driving motorized vehicles or handling hazardous equipment and a conviction of driving under the influence.

2. Examples of situations where the granting or continuation of employment could involve unreasonable risk of substantial harm to property or to the safety of individuals or the public may include but are not limited to the following:

Convictions involving murder (1<sup>st</sup> and 2<sup>nd</sup> degree), assault (1<sup>st</sup> and 2<sup>nd</sup> degree), rape (all counts), arson (1<sup>st</sup> and 2<sup>nd</sup> degree).

3. If a direct relationship or unreasonable risk is established, additional factors that employers should consider include: evidence of rehabilitation; the time that has elapsed since the conviction occurred; and/or the age of the person at the time the conviction occurred.

### **Relating to Exclusions – Unfair Housing Practices**

1. Situations where there may be a direct relationship between the conviction and occupancy or situations where occupancy would involve an unreasonable risk of substantial harm to property or to the safety of individuals or the public include but are not limited to the following:

Convictions involving murder (1<sup>st</sup> and 2<sup>nd</sup> degree), assault (1<sup>st</sup> and 2<sup>nd</sup> degree), rape (all counts), arson (1<sup>st</sup> and 2<sup>nd</sup> degree), possession with intent to manufacture.

2. If a direct relationship or unreasonable risk is established, additional factors that housing providers should consider include: evidence of rehabilitation; the time that has elapsed since the conviction occurred; and/or the age of the person at the time the conviction occurred.

### **Relating to Exclusions from Unfair Contracting Practices**

1. Examples of situations where there may be a direct relationship between the conviction and the contract sought or held by the individual include but are not limited to:

- a. Positions handling money and convictions of theft (1<sup>st</sup> and 2<sup>nd</sup> degree).
- b. Positions involving driving motorized vehicles or handling hazardous equipment and a conviction of driving under the influence.

2. Examples of situations where the granting or continuation of a contract could involve unreasonable risk of substantial harm to property or to the safety of individuals or the public include but are not limited to the following:

Convictions involving murder (1<sup>st</sup> and 2<sup>nd</sup> degree), assault (1<sup>st</sup> and 2<sup>nd</sup> degree), rape (all counts), arson (1<sup>st</sup> and 2<sup>nd</sup> degree).

3. If a direct relationship or unreasonable risk is established, additional factors that employers should consider include: evidence of rehabilitation; the time that has elapsed since the conviction occurred; and/or the age of the person at the time the conviction occurred.

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