

BOARD of SUPERVISORS



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MEMORANDUM

TO: Youth Commission
FROM: Angela Calvillo, Clerk of the Board
DATE: September 30, 2015
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following, which at the request of the Youth Commission is being referred as per Charter Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File. 150902

Ordinance amending the Administrative Code to delete the requirement that applicants for membership on boards and commissions disclose all felony convictions; to limit the City from using criminal history information in making decisions about appointment and removal of members of certain boards, commissions, and other bodies; and to require the City to follow certain restrictions when inquiring about or using conviction history information to make decisions about appointment or removal.

Please return this cover sheet with the Commission's response to **Alisa Somera, Clerk, Rules Committee.**

RESPONSE FROM YOUTH COMMISSION Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Youth Commission

1 [Administrative Code - Considering Criminal History in Appointments to Boards and
2 Commissions]

3 **Ordinance amending the Administrative Code to delete the requirement that applicants**
4 **for membership on boards and commissions disclose all felony convictions; to limit**
5 **the City from using criminal history information in making decisions about**
6 **appointment and removal of members of certain boards, commissions, and other**
7 **bodies; and to require the City to follow certain restrictions when inquiring about or**
8 **using conviction history information to make decisions about appointment or removal.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. The Administrative Code is hereby amended by deleting Section 2.6-4 and
18 adding Article XII, Sections 16.500, 16.501, and 16.502, to Chapter 16, to read as follows:

19 **~~SEC. 2.6-4. DISCLOSURE OF FELONY CONVICTIONS.~~**

20 *Any person applying to the Board of Supervisors for appointment to a board, commission,*
21 *committee, task force, or other body, shall submit, in addition to any other information required as part*
22 *of the application process, a written statement under penalty of perjury disclosing any felony*
23 *convictions.*

24 *These requirements shall not apply to mayoral nominations to boards and commissions*
25 *submitted to the Board of Supervisors pursuant to Charter Section 3.100(15).*

1 (a) As used in this Article XII, the terms "Arrest," "Background Check Report," "City,"
2 "Conviction History," "Evidence of Rehabilitation or Other Mitigating Factors," "Inquire," and
3 "Unresolved Arrest" shall have the meanings set forth in Police Code Section 4903.

4 (b) As used in this Article XII, the following terms have the following meanings:

5 "Adverse Action" shall mean a decision to not nominate or appoint a person as a member of a
6 Board Policy Body or to remove a person as a member of such a body.

7 "Applicant" shall mean a person seeking nomination or appointment to a Board Policy Body.

8 "Conviction" shall mean a record from any jurisdiction that includes information indicating
9 that a person has been convicted of a felony or misdemeanor; provided that the conviction is one for
10 which the person has been placed on probation, fined, imprisoned, or paroled.

11 "Directly-Related Conviction" shall mean that the conduct for which an Applicant or Member
12 was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing
13 on that Applicant or Member's ability to perform the duties or responsibilities of the Board Policy
14 Body or is directly related to matters that the Board Policy Body may consider.

15 "Member" shall mean a person serving as a member of a Board Policy Body.

16 "Board Policy Body" shall mean a board, commission, committee, task force, or other body
17 created by a resolution or ordinance adopted by the Board of Supervisors, that is responsible for
18 exercising the sovereign powers of the City or for advising City employees, officers, departments,
19 boards, or commissions. "Board Policy Body" shall include a committee, task force, or other body of a
20 Board Policy Body. "Board Policy Body" shall not include boards, commissions, committees, task
21 forces, or other bodies created by the Charter or created by an initiative ordinance that specifies the
22 qualifications for appointments to the body.

23
24 **SEC. 16.502. REQUESTS FOR AND USE OF CRIMINAL HISTORY INFORMATION.**
25

1 (a) Regarding appointment to or removal from positions on Board Policy Bodies, City
2 employees and officers shall not, at any time or by any means, inquire about, require disclosure of, or if
3 such information is received base an Adverse Action in whole or in part on:

4 (1) An Arrest not leading to a Conviction, excepting an Unresolved Arrest under
5 circumstances identified in this Section 16.502:

6 (2) Participation in or completion of a diversion or a deferral of judgment program:

7 (3) A Conviction that has been judicially dismissed, expunged, voided, invalidated,
8 or otherwise rendered inoperative, by way of example but not limitation, under California Penal Code
9 sections 1203.4, 1203.4a, or 1203.41:

10 (4) A Conviction or any other determination or adjudication in the juvenile justice
11 system, or information regarding a matter considered in or processed through the juvenile justice
12 system:

13 (5) A Conviction that is more than seven years old, the date of Conviction being the
14 date of sentencing: or

15 (6) Information pertaining to an offense other than a felony or misdemeanor, such as
16 an infraction.

17 Accordingly, the matters identified in this subsection (a) may not be considered in any manner
18 by a City employee or officer in making a decision regarding appointment to or removal from positions
19 on Board Policy Bodies.

20 (b) No City employee or officer shall require Applicants to disclose on any application for
21 membership on a Board Policy Body the facts or details of any Conviction History, any Unresolved
22 Arrest, or any matter identified in subsections (a)(1)-(6). Nor shall any City employee or officer
23 inquire on any application for membership on a Board Policy Body about the facts or details of any
24 Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6). A City
25 employee or officer may ask on an application for membership on a Board Policy Body for an

1 Applicant or Member's written consent for a Background Check so long as the application includes a
2 clear and conspicuous statement that the City will not itself conduct or obtain from a third party the
3 Background Check until either after the first live interview with the person, after the first public
4 hearing regarding the person's potential appointment, or after a conditional offer of appointment in
5 accordance with subsection (c) of this Section 16.502.

6 (c) No City employee or officer shall require Applicants for membership on a Policy Body to
7 disclose, and shall not inquire into or discuss, their Conviction History or an Unresolved Arrest until
8 either after the first live interview with the person (via telephone, videoconferencing, use of other
9 technology, or in person), after the first public hearing regarding the person's potential appointment,
10 or, at the City's discretion, after a conditional offer of appointment. The City may not itself conduct or
11 obtain from a third party a Background Check until either after the first live interview with the person,
12 after the first public hearing regarding the person's potential appointment, or after a conditional offer
13 of appointment.

14 (d) Prior to any Conviction History inquiry, the City shall provide notice to the Applicant or
15 Member that substantially conforms to the notice requirement described in Police Code Section
16 4905(b).

17 (e) Prior to obtaining a copy of a Background Check Report, the City shall comply with all
18 state and federal requirements including but not limited to those in the California Investigative
19 Consumer Reporting Agencies Act (ICRAA), California Civil Code sections 1786 et seq., and the
20 Federal Consumer Reporting Act (FCRA), 15 United States Code sections 1681 et seq., to provide
21 notice to the Applicant or Member that such a report is being sought.

22 (f) In making a decision based on an Applicant or Member's Conviction History, a City
23 employee or officer shall conduct an individualized assessment, considering only Directly-Related
24 Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and any evidence of
25 inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

1 (g) If a City employee or officer intends to base an Adverse Action on an item or items in the
2 Applicant or Member's Conviction History, the City employee or officer shall provide the Applicant or
3 Member with a copy of the Background Check Report, if any, and shall notify the Applicant or Member
4 of the prospective Adverse Action and the items forming the basis for the prospective Adverse Action.

5 (h) City employees and officers shall not engage in any communication that is intended and
6 reasonably likely to reach persons who are reasonably likely to seek appointment to a Board Policy
7 Body, and that expresses, directly or indirectly, that any person with an Arrest or Conviction will not
8 be considered or may not apply for membership on a Board Policy Body.

9 (i) References in this Section 16.502 to "City officers and employees" shall be understood to
10 include members of Board Policy Bodies when considering appointment of persons to, and removal of
11 members from, a committee, task force, or other body of a Board Policy Body.

12
13 Section 2. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

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18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By:



22 JON GIVNER
23 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Considering Criminal History in Appointments to Boards and Commissions]

Ordinance amending the Administrative Code to delete the requirement that applicants for membership on boards and commissions disclose all felony convictions; to limit the City from using criminal history information in making decisions about appointment and removal of members of certain boards, commissions, and other bodies; and to require the City to follow certain restrictions when inquiring about or using conviction history information to make decisions about appointment or removal.

Existing Law

Any person applying to the Board of Supervisors for appointment to a board, commission, or other body must submit a written statement under penalty of perjury disclosing any felony convictions. The Board may decide to appoint or remove any person from such a body because of the person's criminal history.

Amendments to Current Law

The proposed ordinance would delete the requirement that applicants for boards, commissions, and other bodies disclose their criminal history. It would restrict the use of criminal history information in decisions by City officers or employees regarding appointment to or removal from boards, commissions, and other City bodies. Specifically, the ordinance would prohibit the Board of Supervisors or any other City employee or officer from requesting information about a person's criminal history until after an interview or hearing. Even after that point, the City could not consider certain criminal history information, including an arrest not leading to a conviction (other than an arrest that is still the subject of a criminal investigation or trial); participation in or completion of a diversion or deferral of judgment program; a conviction that has been expunged or otherwise made inoperative; a conviction or other determination in the juvenile justice system; a conviction that is more than 7 years old (measured from date of sentencing); and criminal offenses other than felonies or misdemeanors, such as infractions. For other convictions and unresolved arrests—those that the City can consider in deciding whether to appoint or remove a person—the City could only base a decision on convictions and unresolved arrests that have a direct and specific negative bearing on the person's ability to perform his or her duties or responsibilities or that are directly related to matters that the person may consider as a member of the board, commission, or other body.

The restrictions in this ordinance would apply to all boards, commissions, and other bodies created by the Board of Supervisors, but would not apply to bodies created by the Charter or created by an initiative ordinance that specifies the qualifications for appointments.

Background Information

In 2014, the Board of Supervisors adopted Ordinance No. 017-14, which restricted the use of criminal history information in decisions regarding employment and housing. This proposed ordinance will bring the City's policies regarding appointment and removal of board and commission members substantially in line with the policies reflected in Ordinance No. 017-14.

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