

ORDINANCE NO. 16-_____

AN ORDINANCE BY THE CITY OF CLARKSTON TO AMEND CHAPTER 11 OF THE CITY CODE TO ADD ARTICLE VI ENTITLED “FAIR HIRING PRACTICES”; TO REQUIRE THE CITY AND CERTAIN PRIVATE EMPLOYERS THAT DO BUSINESS WITH THE CITY TO REFRAIN FROM ANY INQUIRIES REGARDING EMPLOYMENT APPLICANTS' PRIOR CRIMINAL ARRESTS OR CONVICTIONS UNTIL THEY HAVE MADE A CONTINGENT OFFER OF EMPLOYMENT TO THE APPLICANT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Clarkston 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 of Clarkston 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 U.S. Equal Employment Opportunity Commission has stated that “excluding individuals from employment on the basis of their conviction records has an adverse impact on Blacks and Hispanics in light of statistics showing that they are convicted at a rate disproportionately greater than their representation in the population” and that “such a policy or practice is unlawful under Title VII in the absence of a justifying business necessity”; 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, the inability to obtain gainful employment after release from incarceration can contribute to a host of problems including high rates of unemployment, increased recidivism rates, and increased crime; and

WHEREAS, the community at large benefits when recidivism rates are reduced and gainful employment is critical for individuals to avoid re-offending, and

WHEREAS, there has been a nationwide initiative, referred to as “Ban the Box”, in which employers are encouraged to remove questions regarding prior criminal convictions from employment applications; and

WHEREAS, various governments throughout the United States, including Georgia, through Governor Deal’s executive order; Hartford and New Haven, Connecticut; Boston, Cambridge, and Worcester, Massachusetts; Detroit, Michigan; Atlantic City and Newark, New Jersey; Buffalo and New York City, New York; Philadelphia, Pennsylvania; Seattle, Washington and the states of Hawaii, Massachusetts, Minnesota, and Rhode Island have all adopted employment application practices aligned with the "Ban the Box" initiative that are applicable to government contractors or all private employers; and

WHEREAS, the City of Clarkston has an opportunity to lead the way toward greater economic opportunity for individuals by providing equal opportunities for employment to members of the community, including those members who were formerly incarcerated and are attempting to rebuild their lives; and

WHEREAS, the City of Clarkston 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 of Clarkston recognizes that the private employers subject to this ordinance 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.

NOW THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. The document entitled “Clarkston Fair Hiring Practices Ordinance” and consisting of six (6) pages is hereby adopted as new Article VI of Chapter 11 of the City Code.

Section 2. If any section, subsection, paragraph, sentence or word of this Ordinance is for any reason held to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, paragraph, sentence or word of this Ordinance irrespective of the invalidity of any other section, subsection, paragraph, sentence or word.

Section 3. This Ordinance shall become effective immediately upon its final adoption by the City Council.

ADOPTED this _____ day of _____, 2016.

ATTEST:

CITY COUNCIL OF
CITY OF CLARKSTON, GEORGIA

Tracy Ashby, City Clerk
(SEAL)

Mayor Ted Terry

Approved as to Form:



Stephen G. Quinn, City Attorney

Clarkston Fair Hiring Practices Ordinance

Section 11-101. Definitions.

The following words and phrases whenever used in this Article shall be construed as defined in this section:

“Adverse Action” means a refusal to hire, a refusal to promote, or the revocation of an offer of employment or promotion.

“Application” means a written or oral expression of interest in a job by an individual made in compliance with the employer's established criteria for receiving expressions of interest.

"City" means the City of Clarkston and all City agencies, departments and offices.

“Conditional Employment Offer” means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's subsequent evaluation of the individual's criminal history.

"Covered Contract" means a contract that is not exempted by the terms of this Article and is let to a Covered Employer by the City for the furnishing of services pursuant to a bidding process, whether formal or informal, or a contract specifically designated as covered by this Article by the Clarkston City Council.

"Covered Employer" means a person, company, corporation, firm, labor organization, or association that enters into a Covered Contract with the City. The term includes an agency acting on behalf of an employer. The term does not include:

1. the United States;
2. a corporation wholly owned by the government of the United States;
3. the State of Georgia or a State agency; or
4. a political subdivision of the State.

“Criminal History” means an arrest, conviction, plea of nolo contendere, or deferred adjudication arising from a felony criminal accusation, or a Class A or Class B misdemeanor criminal accusation, made under state law, federal law, or a comparable law of another state of the United States;

“Individualized Assessment” means an evaluation of the Criminal History of an individual performed by an employer that includes offering the applicant an opportunity to explain his/her Criminal History and consideration of, at a minimum, the following factors:

1. the nature and gravity of any offenses in the individual's Criminal History and any mitigating circumstances;
2. the length of time since the offense and completion of the sentence;
3. the nature and duties of the job for which the individual has applied; and

4. evidence of rehabilitation.

“Public Works Construction” means the designing, engineering, building, altering, repairing, improving, or demolishing of any public structure or building or infrastructure or other public improvements of any kind.

Section 11-102. Fair Hiring Practices for Employment with the City.

Except for such jobs exempted by Section 11-105(A), the City shall observe each of the following fair hiring practices:

- A) The City shall not solicit or otherwise inquire about the Criminal History of an individual in an Application for a job.
- B) The City shall not publish or cause to be published information about a job that states or implies that an individual's Criminal History automatically disqualifies the individual from consideration for the job.
- C) The City shall not solicit Criminal History information about an individual or consider an individual's Criminal History unless the City has first made a Conditional Employment Offer to the individual. This does not preclude the City from explaining to applicants, in writing, the Individualized Assessment system that the City uses to consider Criminal History.
- D) The City shall not refuse to consider employing an individual because the individual did not provide Criminal History information before the individual received a Conditional Employment Offer.
- E) The City shall not take Adverse Action against an individual because of the individual's Criminal History unless the City has determined that the individual is unsuitable for the job based on an Individualized Assessment conducted by the City.
- F) When the City takes Adverse Action against an individual based on the individual's Criminal History, it must inform the individual in writing that the Adverse Action was based on the individual's Criminal History.
- G) The City shall not inquire about any arrest or criminal accusation made against an Applicant which is not then pending against that person and which did not result in a conviction.

Section 11-103. Applicability to Private Employers.

A) Mandatory Applicability.

Except for jobs exempted by Section 11-105, every Covered Contract entered into by the City with a Covered Employer shall require the Covered Employer that contracts

with the City to comply with fair hiring practices by refraining from undertaking the conduct designated as prohibited in Subsection (C) of this Section as a condition precedent to the Covered Contract with the City becoming effective.

B) City Council Designated Covered Contracts.

The City Council may designate any contract for services which it approves as a Covered Contract regardless of whether or not such contract would otherwise meet the definition of a Covered Contract under this Article and regardless of whether or not the contractor or vendor that proposes to contract with the City would otherwise qualify as a Covered Employer as defined in this Article. Any contract so designated as a Covered Contract by the City Council shall require the employer contracting with the City to refrain from undertaking the conduct prohibited by Subsection (C) of this Section.

C) Prohibited Conduct for Employers Engaged in Covered Contracts.

- (1) The employer shall not include any question regarding Criminal History on its printed and/or on-line employment application forms.
- (2) The employer shall not make any inquiry into an Applicant's Criminal History until a Conditional Employment Offer is made to the Applicant.
- (3) The employer shall not publish any information regarding a job that states or implies that an individual's Criminal History automatically disqualifies him from consideration for a job.
- (4) The employer shall not refuse to consider an Application because the Applicant did not provide his Criminal History prior to receiving a Conditional Employment Offer.
- (5) The employer shall not take Adverse Action against an individual based on his Criminal History unless the employer simultaneously notifies the individual in writing that such Adverse Action was based on his Criminal History.

Section 11-104. Best Practices.

A) A contractor participating in a bid process for a contract with the City, whether or not such contractor would otherwise qualify as a Covered Employer as defined herein, may elect to voluntarily observe the prohibitions set forth in Section 11-103(C), and/or one or more of the following fair hiring best practices:

- i. If a Criminal History investigation is required by State and/or Federal law for a position, the background screening will be conducted after the employer has determined that the Applicant is otherwise qualified, and the employer has made a Conditional Offer of

Employment to the Applicant.

- ii. The employer's consideration of a Criminal History must involve an Individualized Assessment.
- iii. The written notice of Adverse Action based on Criminal History will include a summary of the results of the employer's Individualized Assessment of the Applicant's Criminal History.

B) A contractor's willingness to voluntarily observe fair hiring prohibitions and/or best practices should be presented to the City when bidding on a contract. Such willingness shall be a factor which is considered by the City when deciding the successful bidder for a contract that is not strictly a "low bid" situation. When a contractor voluntarily commits to fair hiring best practices, such practices shall be included in the contract in the same manner contemplated by Section 11-103 for Covered Contracts.

C) The City Manager shall maintain a list of contractors that have demonstrated a commitment to observing fair hiring practices pursuant to Section 11-103(C) and/or have voluntarily submitted themselves to best practices pursuant to this Section. The contractors identified on such list shall be given preference when the City enters into a contract for services, whether bidding is required or not.

Section 11-105. Exemptions.

- A) The City shall not be required to comply with Section 11-102 when hiring a POST certified law enforcement officer.
- B) If a criminal background investigation is required by State and/or Federal law for a position, then an employer is not required to follow Section 11-103 when hiring for such position, unless such employer voluntarily agrees to do so pursuant to Section 11-104.
- C) When the procurement process does not result in a responsive bid from any contractor that is willing to abide by the terms of Section 11-103, the City Manager should re-start the procurement process in an attempt to identify a contractor that will meet the requirements of § 11-103 unless the need for such services constitutes an emergency. In case of emergency or when two or more attempts at procurement do not identify a qualified contractor that is willing to abide by the terms of § 11-103, the City Manager may issue an exemption to the most responsive contractor that bid on the contract such that the terms of this Article will not apply to such contract so exempted.
- D) Nothing in this chapter limits an employer's authority to withdraw a Conditional Offer of Employment for any lawful reason, including the determination that an individual is unsuitable for the job based on an Individualized Assessment of the individual's Criminal History.

- E) Public Works Construction contracts with a value of greater than One Hundred Thousand Dollars (\$100,000.00) shall not be subject to mandatory participation in fair hiring practices pursuant to Section 11-103. However, the City will include a preference in Public Works Construction request for proposal solicitations that are not strictly “low bid” for contractors that agree to voluntarily observe fair hiring best practices pursuant to Section 11-104.

Section 11-106. Compliance.

(a) Each employer engaged in a Covered Contract with the City must provide the City with a copy of their employment application form as a precondition to their contract with the City becoming effective.

(b) Each Covered Contract shall provide that violation of this Article shall be cause for suspension or termination of the Covered Contract and shall provide for payment of \$1,000.00 as liquidated damages to the City as a reasonable estimate of actual damages incurred by the City in the event that a Covered Contract is terminated by the City due to the employer’s non-compliance with this Article.

(c) Each employer engaged in a Covered Contract with the City shall submit a sworn written affirmation of compliance with this ordinance along with each invoice or application for payment as a precondition to receiving any payment from the City contemplated by a Covered Contract.

(d) The City Manager or designee shall conduct periodic, random reviews of employers currently engaged in performance of a Covered Contract to assess compliance with this Article.

(e) If the City Manager determines that an employer has failed to comply with Section 11-103 or, if made applicable by a contractor’s voluntary commitment to comply therewith, Section 11-104, then the City Manager or designee may act to suspend the Covered Contract in whole or in part pursuant to a written “Notice of Noncompliance,” with continuance of the Covered Contract conditioned upon a satisfactory showing to the City Manager of the employer's commitment to comply with this Article.

(f) Should an employer fail to comply with a "Notice of Noncompliance" as specified above, then the City Manager may make a final determination of noncompliance and terminate the Covered Contract.

(g) The City shall keep a record of all violations of this Article by employers. A history of violation of the Article shall be a factor which is considered by the City when deciding upon any future awards of contracts and may form the basis for denying any future contracts to such employer.

Section 11-107. Reporting by City Manager.

The City Manager shall make a report on compliance with this Article, exemptions pursuant to Section 11-105(C) and any related matters to the City Council on a quarterly basis.