

[Police, Administrative Codes - Considering Criminal History in Employment and Housing Decisions]

Ordinance amending the Police Code to require Employers and Housing Providers to limit the use of criminal history information and follow certain procedures and restrictions when inquiring about and using conviction history information to make decisions about employment and tenancy in San Francisco; and amending the Administrative Code to require City contractors and subcontractors to adhere to the same limits, procedures, and restrictions when making decisions regarding employment of persons for work on City contracts and subcontracts.

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

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

Section 1. The San Francisco Police Code is hereby amended by adding Article 49, Sections 4901-4920, to read as follows:

ARTICLE 49: PROCEDURES FOR CONSIDERING ARRESTS AND CONVICTIONS AND RELATED INFORMATION IN EMPLOYMENT AND HOUSING DECISIONS

Sec. 4901. Policy.

Sec. 4902. Findings.

Sec. 4903. Definitions.

1 *Sec. 4904. Procedures for Use of Criminal History Information in Employment*

2 *Decisions.*

3 *Sec. 4905. Notice and Posting Requirements for Employers.*

4 ~~Sec. 4906. Employer Questionnaire.~~

5 *Sec. 49076. Procedures for Use of Criminal History Information in Housing*

6 *Decisions.*

7 *Sec. 49087. Notice and Posting Requirements for Housing Providers.*

8 *Sec. 49098. Exercise of Rights Protected; Retaliation Prohibited.*

9 *Sec. 49109. Implementation and Enforcement of Employment Provisions.*

10 *Sec. 49140. Employer Records.*

11 *Sec. 49121. Implementation and Enforcement of Housing Provisions.*

12 *Sec. 49132. Housing Provider Records.*

13 *Sec. 49143. Rulemaking.*

14 *Sec. 49154. Outreach.*

15 *Sec. 49165. Other Legal Requirements.*

16 *Sec. 49176. Preemption.*

17 *Sec. 49187. City Undertaking Limited to Promotion of General Welfare.*

18 *Sec. 49198. Severability.*

19 *Sec. 492019. Operative Date.*

20
21 ***SEC. 4901. POLICY.***

22 *It is the policy of the City and County of San Francisco to enhance public health and safety by*
23 *reducing recidivism and its associated criminal justice costs and societal costs, and facilitating the*
24 *successful reintegration into society of persons with arrest and conviction records. This Article is*
25 *enacted for the purpose of furthering this policy.*

1 **SEC. 4902. FINDINGS.**

2 After public hearings and consideration of testimony and documentary evidence, the Board of
3 Supervisors finds and declares that the health, safety, and well-being of San Francisco’s communities
4 depend on increasing access to employment and housing opportunities for people with arrest or
5 conviction records in order for them to effectively reintegrate into the community and provide for their
6 families and themselves. Barriers to these opportunities for people with arrest or conviction records
7 increase recidivism and thereby jeopardize the safety of the public, disrupt the financial and overall
8 stability of affected families and of our communities, and impede the City’s achieving its maximum
9 potential of economic growth. Further, establishing procedures for the lawful use of criminal history
10 information in employment and housing decisions can assist employers and housing providers by
11 preventing the automatic exclusion of individuals who may be qualified, and in some cases well-
12 qualified, employees or tenants.

13 In San Francisco, as across the country, individuals are often plagued by old or minor arrest or
14 conviction records that discourage them from applying for jobs or housing because a “box” on the
15 application requires disclosure of criminal history information that likely will automatically exclude
16 them from consideration. Precise statistics in this area are difficult to come by, but by any measure the
17 problem is major, affecting a large number of individuals and families. By one measure, some sixty-
18 five million Americans have a criminal record that may show up on a routine background check report.
19 In California, it has been estimated that almost one in four adults have arrest or conviction records.
20 Many thousands of people in our local community are directly impacted by barriers to reintegration
21 based on these records.

22 In today’s digital age, there has been widespread proliferation in the use of criminal
23 background checks, with hundreds of companies offering over the internet low-cost criminal
24 background checks. Surveys have shown that as many as ninety percent of employers and eighty
25 percent of private housing providers conduct background checks. And the information that such

1 background checks may yield can have a devastating impact on the employment and housing
2 opportunities of persons with a criminal history, with damaging spillover effects on families and
3 communities. One study found that two-thirds of employers surveyed in five major U.S. cities would not
4 knowingly hire a person with a criminal record, regardless of the offense. Another study found that a
5 criminal record reduces the likelihood of a job callback or offer by nearly fifty percent. Among those
6 seeking assistance from the San Francisco Public Defender's Clean Slate program, a pool of
7 individuals with a criminal record, only about one-third are employed, and the majority of those
8 employed earn an annual income of \$3,000 or less.

9 The problems presented by employers and housing providers who use a person's criminal
10 history to deny that person employment or housing opportunities are growing rather than diminishing.
11 In response to this challenge, more than fifty cities and counties in the United States have adopted
12 policies that to one degree or another regulate the inquiry into an individual's criminal history, at least
13 as to individuals employed by those localities. Eleven of those localities apply their policies to those
14 who contract with them. The cities of Philadelphia, Newark, Seattle, and Buffalo have applied their
15 policies to all private employers within their boundaries. At the state level, ten states have adopted
16 policies to address this challenge and four states—Hawaii, Massachusetts, Minnesota and Rhode
17 Island--have applied their policies to private employers. The economic rationale often cited for these
18 reforms is to maximize the pool of talented, qualified workers for employers and to fully utilize the
19 productive capacity of people with prior arrests or convictions, for the improvement of the economy.

20 Regulating inquiries into an individual's criminal history is gaining traction as one facet of the
21 nationwide effort to reduce the recidivism that leads to serial incarceration. A major rationale for this
22 movement is the growing awareness that incarceration has devastating socioeconomic consequences.
23 Researchers have found that more incarceration has the perverse effect of increasing the crime rate in
24 some communities. Children suffer academically and socially, and have decreased economic mobility,
25 after the incarceration of a parent. Incarceration is also linked to homelessness, impacting public

1 health and safety. Twenty-six percent of homeless people surveyed in San Francisco had been
2 incarcerated within the previous twelve months, and an estimated thirty to fifty percent of parolees in
3 San Francisco are homeless.

4 On October 1, 2011, San Francisco and the rest of California implemented AB 109, a
5 “Realignment” of California’s criminal justice system, which seeks to produce budgetary savings by
6 reducing recidivism and promoting rehabilitation. As stated by Governor Edmund G. Brown, Jr. in
7 signing AB 109, cycling people through the revolving door of “state prisons wastes money, aggravates
8 crowded conditions, thwarts rehabilitation, and impedes local law enforcement supervision.” Added by
9 AB 109, Section 3451 of the California Penal Code states that counties must focus on alternatives to
10 incarceration that have a proven track record of reducing recidivism. Moreover, Section 17.5 of the
11 Penal Code states that criminal justice policies that rely on building and operating more prisons to
12 address community safety concerns are not sustainable, and will not result in improved public safety.
13 Removing unnecessary obstacles to employment and housing that impede reintegration and
14 rehabilitation supports the goals for “Realignment.”

15 Lack of employment and housing are significant causes of recidivism; people who are employed
16 and have stable housing are significantly less likely to be re-arrested. For example, one study of 1,600
17 individuals recently released from prison in Illinois found that only eight percent of those who were
18 employed for a year committed another crime, compared to the state’s average recidivism rate of fifty-
19 four percent. In another study, researchers found that from 1992 to 1997, the slightly more than forty
20 percent of the decline in the overall property crime rate could be attributed to the thirty-three percent
21 decline in the unemployment rate during the same period. Still another study in New York reported
22 that a person without stable housing was seven times more likely to re-offend after returning from
23 prison. There is little doubt that a policy designed to improve the employment and housing prospects of
24 persons with arrest or conviction history will enhance their prospects for becoming productive
25 members of the community, and thereby benefiting all of us.

1 Policies that encourage reintegration and reduce recidivism can also help reduce criminal
2 justice costs. The Legislative Analyst Office estimated that in 2005-2006, counties in California spent
3 on average about \$28,000 per year to incarcerate an adult in jail and about \$1,250 per year to
4 supervise an adult on probation in the community. One study estimated that in terms of court,
5 prosecution, and law enforcement costs, the County spends an average of \$16,379 to process a person
6 who has committed a drug offense through the criminal justice system. When a person successfully
7 reintegrates and does not return to the criminal justice system, these costs are avoided, allowing scarce
8 public dollars to be reinvested in programs that make our communities stronger and safer.

9 Not only is it a matter of public safety to ensure that workers have job and housing
10 opportunities, but it is also critical for a stable economy. Economists at the Center for Economic and
11 Policy Research used Bureau of Justice Statistics data to estimate that in 2008, the United States had
12 between 12 and 14 million formerly incarcerated people and people with felonies of working age.
13 Citing this population's greatly reduced job prospects, the researchers estimated that the total male
14 employment that year was reduced by 1.5 to 1.7 percentage points and that the cost to the U.S.
15 economy was between \$57 and \$65 billion in lost output.

16 The expansion of the criminal justice system and all of its attendant consequences described
17 herein, coupled with the growth of the for-profit criminal background check industry, has created a
18 need for local regulations on the use of arrest and conviction records. On March 29, 2011, the Reentry
19 Council of the City & County of San Francisco, chaired by the Chief Adult Probation Officer, and
20 comprised of that official and the District Attorney, Mayor, Public Defender, and Sheriff, urged the
21 the enactment of an ordinance to reduce unnecessary barriers to housing and employment for
22 individuals based on arrest or conviction records. This Article is an important part of implementing
23 that general recommendation.

24 But there are some senses in which this Article is of limited scope. This Article does not intend,
25 and shall not be construed, to require an employer to give preference to anyone or to hire an

1 unqualified person with an arrest or conviction record. Nor does it require a housing provider to give
2 preference to anyone or to rent to an unqualified tenant with an arrest or conviction record. Moreover,
3 this Article shall not be construed to limit an employer or a housing provider's ability to choose the
4 most qualified and appropriate candidate from applicants for employment or housing.

5 **SEC. 4903. DEFINITIONS.**

6 For the purposes of this Article, the following words and phrases shall mean and include:

7 "Adverse Action" in the context of employment shall mean to fail or refuse to hire, to discharge,
8 or to not promote any individual; or to limit, segregate or classify employees in any way which would
9 deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect
10 his/her status as an employee. The "Adverse Action" must relate to employment in whole or
11 substantial part in the City. "Adverse Action" in the context of housing shall mean to evict from, fail or
12 refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real
13 property to an individual, or fail or refuse to add a household member to an existing lease, or to reduce
14 any tenant subsidy. The "Adverse Action" must relate to real property in the City .

15 "Affordable Housing" means any residential building in the City that has received funding from
16 the City, connected in whole or in part to restricting rents, the funding being provided either
17 directly or through financing resulting from the City's issuance of tax exempt bonds indirectly
18 through funding to another entity that owns, master leases, or develops the building.

19 Affordable Housing also includes "affordable units" in the City as that term is defined in Article 4 of
20 the Planning Code. Projects that are financed using City-issued tax exempt bonds but that
21 receive no other funding from the City or are not otherwise restricted by the City shall not
22 constitute Affordable Housing.

23 "Arrest" shall mean a record from any jurisdiction that does not result in a conviction and
24 includes information indicating that a person has been questioned, apprehended, taken into custody or
25 detentiondetained, or held for investigation, by a law enforcement, police, or prosecutorial agency

1 and/or charged with, indicted, ~~or tried,~~ ~~or and~~ acquitted for any felony, misdemeanor or other criminal
2 offense. “Arrest” is a term that is separate and distinct from, and that does not include, “Unresolved
3 Arrest.”

4 “Background Check Report” shall mean any criminal history report, including but not limited
5 to those produced by the California Department of Justice, the Federal Bureau of Investigation, other
6 law enforcement or police agencies, or courts, or by any consumer reporting agency or business,
7 employment screening agency or business, or tenant screening agency or business.

8 “City” shall mean the City and County of San Francisco.

9 “Conviction” shall mean a record from any jurisdiction that includes information indicating
10 that a person has been convicted of a felony, ~~or misdemeanor~~ ~~or other offense~~; provided that the
11 conviction is one for which the person has been placed on probation, fined, imprisoned, or paroled.
12 Those matters identified in Section 4904(a) and/or Section 49076(a) about which an Employer and/or
13 Housing Provider may not inquire and as to which they may not base an Adverse Action, are not
14 considered “Convictions.”

15 “Conviction History” shall mean information regarding one or more Convictions or
16 Unresolved Arrests, transmitted orally or in writing or by any other means, and obtained from any
17 source, including but not limited to the individual to whom the information pertains and a
18 Background Check Report.

19 “Directly-Related Conviction” in the employment context shall mean that the conduct for which
20 a person was convicted or that is the subject of an Unresolved Arrest has a direct and specific
21 negative bearing on that person’s ability to perform the duties or responsibilities necessarily related to
22 the employment position. In determining whether the conviction or Unresolved Arrest is directly
23 related to the employment position, the Employer shall consider whether the employment position
24 offers the opportunity for the same or a similar offense to occur and whether circumstances leading to
25 the conduct for which the person was convicted or that is the subject of an Unresolved Arrest will recur

1 in the employment position. “Directly-Related Conviction” in the housing context shall mean that the
2 conduct for which a person was convicted or that is the subject of an Unresolved Arrest has a direct
3 and specific negative bearing on the safety of persons or property, given the nature of the housing. In
4 determining whether the conviction or Unresolved Arrest is directly related to the housing, the Housing
5 Provider shall consider whether the housing offers the opportunity for the same or a similar offense to
6 occur and whether circumstances leading to the conduct for which the person was convicted will recur
7 in the housing, and whether supportive services that might reduce the likelihood of a recurrence of such
8 conduct are available on-site. Those matters identified in Sections 4904(a) and/or Sections 49076(a)
9 about which an Employer and/or Housing Provider may not inquire and as to which they may not base
10 an Adverse Action may not qualify as “Directly-Related Convictions.”

11 “Employer” shall mean any individual, firm, corporation, partnership, labor organization,
12 group of persons, association, or other organization however organized, that is located or doing
13 business in the City, and that employs 20 or more persons regardless of location, including the owner
14 or owners and management and supervisory employees. “Employer” includes job placement and
15 referral agencies and other employment agencies. “Employer” does not include the City and County
16 of San Francisco, any other local governmental unit, or any unit of the state government or the federal
17 government.

18 “Employment” shall mean any occupation, vocation, job, or work, , including but not limited to
19 temporary or seasonal work, part-time work, contracted work, contingent work, work on commission,
20 and work through the services of a temporary or other employment agency, or any form of vocational
21 or educational training with or without pay. The physical location of the employment or prospective
22 employment of an individual as to whom Section 4904 applies must be in whole, or in substantial part,
23 within the City.

24 “Evidence ~~O~~of Rehabilitation ~~O~~or Other Mitigating Factors” may include but is not limited to
25 a person’s satisfactory compliance with all terms and conditions of parole and/or probation (however,

1 inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with
2 terms and conditions of parole and/or probation); employer recommendations, especially concerning a
3 person’s post-conviction employment; educational attainment or vocational or professional training
4 since the conviction, including training received while incarcerated; completion of or active
5 participation in rehabilitative treatment (e.g., alcohol or drug treatment); letters of recommendation
6 from community organizations, counselors or case managers, teachers, community leaders, or
7 parole/probation officers who have observed the person since his or her conviction; and age of the
8 person at the time of the conviction. Examples of mitigating factors that are offered voluntarily by the
9 person may include but are not limited to explanation of the precedent coercive conditions, intimate
10 physical or emotional abuse, or untreated substance abuse or mental illness that contributed to the
11 conviction.

12 “Housing Provider” shall mean an entity that owns, ~~master leases,~~ or develops Affordable
13 Housing in the City and receives funding from the City for such projects, either directly or
14 through financing resulting from the City’s issuance of tax exempt bonds. “Housing Provider”
15 also includes owners and developers of below market rate housing in the City or “affordable units,” as
16 that term is defined in Article 4 of the Planning Code, in the City. Any agent, such as a property
17 management company, that makes tenancy decisions on behalf of the above described entities shall also
18 be considered a Housing Provider.

19 “HRC” shall mean the Human Rights Commission or any successor department or office. The
20 “Director” of HRC shall mean the department head of the HRC.

21 “Inquire” shall mean any direct or indirect conduct intended to gather information from or
22 about an applicant, candidate, potential applicant or candidate, or employee, using any mode of
23 communication, including but not limited to application forms, interviews, and Background Check
24 Reports.

1 "OLSE" shall mean the Office of Labor Standards Enforcement or any successor department or
2 office. The "Director" of OLSE shall mean the head of the OLSE.

3 "Person" shall mean any individual, person, firm, corporation, business or other organization
4 or group of persons however organized. ~~"Person" often means an individual with a Conviction~~
5 ~~History or Unresolved Arrest or with a record pertaining to the matters identified in Section~~
6 ~~4904(a) and/or Section 49076(a).~~

7 "Unresolved Arrest" shall mean an Arrest that has led to ais undergoing an active pending
8 criminal investigation or trial that has not yet been resolved. An Arrest has been resolved if the
9 arrestee was released and no accusatory pleading was filed charging him or her with an
10 offense, or if the charges have been dismissed or discharged by the district attorney or the
11 court.

12 **SEC. 4904. PROCEDURES FOR USE OF CRIMINAL HISTORY INFORMATION IN**
13 **EMPLOYMENT DECISIONS.**

14 (a) Regarding applicants or potential applicants for employment, or employees, an
15 Employer shall not, at any time or by any means, inquire about, require disclosure of, or if such
16 information is received base an Adverse Action in whole or in part on:

17 (1) An Arrest not leading to a Conviction, excepting under circumstances identified
18 in this Section an Unresolved Arrest;

19 (2) Participation in or completion of a diversion or a deferral of judgment program;

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

23 (4) A Conviction or any other determination or adjudication in the juvenile justice
24 system, or information regarding a matter considered in or processed through the juvenile justice
25 system; ~~of~~

1 (5) A Conviction that is more than seven years old, the date of Conviction being the
2 date of sentencing; or

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

5 Accordingly, the matters identified in this subsection (a) may not be considered in any manner
6 by the Employer.

7 (b) The Employer shall not require applicants or potential applicants for employment or
8 employees to disclose on any employment application the fact or details of any Conviction History, any
9 Unresolved Arrest, or any matter identified in subsections (a)(1)-(56). Nor shall the Employer inquire
10 on any employment application about the fact or details of any Conviction History, any Unresolved
11 Arrest, or any matter identified in subsections (a)(1)-(56).

12 (c) The Employer shall not require applicants or potential applicants for employment, or
13 employees, to disclose, and shall not inquire into, their Conviction History or an Unresolved Arrest
14 until either after the first live interview with the person (via telephone, videoconferencing, use of other
15 technology, or in person) or, at the Employer's discretion, after a conditional offer of employment.

16 (d) Prior to any Conviction History inquiry, the Employer shall provide a copy of the notice
17 described in Section 4905(b) to the applicant or employee.

18 (e) Prior to obtaining a copy of a Background Check Report, the Employer shall comply
19 with all state and federal requirements including but not limited to those in the California Investigative
20 Consumer Reporting Agencies Act (ICRAA), California Civil Code sections 1786 et seq., and the
21 Federal Consumer Reporting Act (FCRA), 15 United States Code sections 1681 et seq., to provide
22 notice to the applicant or employee that such a report is being sought. ~~The Employer must also~~
23 provide the applicant or employee notice in writing of his or her right pursuant to this Section
24 4904 to provide the Employer with evidence of inaccuracy or Evidence of Rehabilitation or
25 Other Mitigating Factors regarding any items of Conviction History found in the report, and the

1 deadline for providing such information. For such information to be required to be considered
2 by the Employer, the applicant or employee must give the Employer notice, orally or in writing,
3 of such information within seven days of the date that the report is sent by the Employer to the
4 applicant or employee.

5 (f) In making an employment decision based on an applicant's or employee's Conviction
6 History, an Employer shall conduct an individualized assessment, considering only Directly-Related
7 Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and any evidence of
8 inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

9 (g) If an Employer intends to base an Adverse Action on an item or items of in the
10 applicant or employee's Conviction History, found in the applicant or employee prior to taking
11 any Adverse Action the Employer shall provide the applicant or employee with a copy of the
12 Background Check Report, if any, and shall notify the applicant or employee of the
13 prospective Adverse Action and the items forming the basis for the prospective Adverse
14 Action.

15 (h) If, within seven days of the date that the notice described in subsection (g) is
16 provided by the Employer to the applicant or employee, the applicant or employee gives the
17 Employer notice, orally or in writing, of evidence of the inaccuracy of the item or items of
18 Conviction History or any Evidence of Rehabilitation or Other Mitigating Factors Background
19 Check Report and the applicant or employee submits evidence of the items' inaccuracy or
20 Evidence of Rehabilitation or Other Mitigating Circumstances within the required time period,
21 the Employer shall delay any Adverse Action for a reasonable time period after receipt of the
22 information and during that time shall reconsider the prospective Adverse Action in light of the
23 information.

1 (hi) Upon taking any final Adverse Action based upon the Conviction History of an applicant
2 or employee, an Employer shall deliver to notify the applicant or employee a copy of the completed
3 questionnaire described in Section 4906 of the final Adverse Action.

4 (ij) It shall be unlawful for any Employer to produce or disseminate any solicitation or
5 advertisement that is reasonably likely to reach persons who are reasonably likely to seek employment
6 in the City, and that expresses, directly or indirectly, that any person with an Arrest or Conviction will
7 not be considered for employment or may not apply for employment.

8 (jk) Nothing in this Section 4904 shall be construed to prohibit an Employer from observing
9 the conditions of a seniority system or an employee benefit plan, provided such systems or plans are not
10 a subterfuge to evade the purposes or requirements of this Article.

11 **SEC. 4905. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.**

12 (a) The Employer shall state in all solicitations or advertisements for employees that are
13 reasonably likely to reach persons who are reasonably likely to seek employment in the City, that the
14 Employer will consider for employment qualified applicants with criminal histories in a manner
15 consistent with the requirements of this Article.

16 (b) The OLSE shall, by the operative date of this Article, publish and make available to
17 Employers, in English, Spanish, Chinese, and all languages spoken by more than 5% of the San
18 Francisco workforce, a notice suitable for posting by Employers in the workplace informing applicants
19 and employees of their rights under this Article. The OLSE shall update this notice on December 1 of
20 any year in which there is a change in the languages spoken by more than 5% of the San Francisco
21 workforce. At a minimum the notice described above shall contain the following information:

22 (1) A description of those matters identified in Section 4904(a) that may not be
23 considered by the Employer under any circumstances;

1 (2) A description of the restrictions and requirements that Section 4904 imposes on
2 Employers when inquiring about Conviction History in connection with an employment or hiring
3 decision;

4 (3) The definition of Evidence of Rehabilitation or Other Mitigating Factors
5 provided in Section 4903, and under what circumstances and timeline under which the applicant or
6 employee has a right to provide such evidence as provided in Section 4904(h) ; and

7 (4) The OLSE telephone number and email address that the applicant or employee
8 may use to make a report if he or she believes the Employer has violated any of the provisions of this
9 Article 49.

10 (c) Employers shall post the notice described in subsection (b) in a conspicuous place at
11 every workplace, job site, or other location in San Francisco under the Employer's control frequently
12 visited by their employees or applicants, and shall send a copy of this notice to each labor union or
13 representative of workers with which they have a collective bargaining agreement or other agreement
14 or understanding, that is applicable to employees in San Francisco. The notice shall be posted in
15 English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace,
16 job site, or other location at which it is posted.

17 ~~SEC. 4906. EMPLOYER QUESTIONNAIRE.~~

18 ~~(a) The OLSE shall, by the operative date of this Article, publish and make~~
19 ~~available to Employers, a questionnaire to be completed by the Employer prior to taking any~~
20 ~~final Adverse Action against an applicant or employee on the basis of his or her Conviction~~
21 ~~History, that contains at a minimum the following information:~~

22 ~~(1) A statement that the notice is being provided in order to comply with~~
23 ~~Article 49 of the San Francisco Police Code.~~

24 ~~(2) Questions that shall prompt the Employer to provide the following~~
25 ~~information in yes/no or multiple choice format:~~

1 ~~_____ (A) Whether, and if so when, the applicant or employee was asked to~~
2 ~~voluntarily disclose information about his or her Conviction History;~~

3 ~~_____ (B) Whether, and if so when, a Background Check Report was~~
4 ~~obtained by the Employer;~~

5 ~~_____ (C) If the applicant or employee requested a copy of the Background~~
6 ~~Check Report and any items of Conviction History appeared on the report, whether the~~
7 ~~applicant or employee submitted any evidence of inaccuracy or Evidence of Rehabilitation or~~
8 ~~Other Mitigating Factors;~~

9 ~~_____ (D) Whether the Employer gave consideration to any information by~~
10 ~~the applicant or employee of the report's inaccuracy or to any Evidence Of Rehabilitation Or~~
11 ~~Other Mitigating Factors;~~

12 ~~_____ (E) Whether the Employer gave any consideration to the amount of~~
13 ~~time elapsed since the conviction or release from incarceration or conduct that is the subject~~
14 ~~of an Unresolved Arrest;~~

15 ~~_____ (F) Whether the employment position at issue would give the applicant~~
16 ~~or employee the opportunity to commit the same or similar offenses;~~

17 ~~_____ (G) Whether the circumstances leading to the conduct for which the~~
18 ~~applicant or employee was convicted or that is the subject of an Unresolved Arrest would~~
19 ~~recur in the employment position at issue; and~~

20 ~~_____ (H) The OLSE telephone number and email address that the applicant~~
21 ~~or employee may use to make a report if he or she believes the Employer has violated any of~~
22 ~~the provisions of Article 49.~~

23 ~~(b) Upon taking any Adverse Action an Employer shall deliver to the applicant or~~
24 ~~employee a copy of the completed questionnaire.~~

1 **SEC. 49076. PROCEDURES FOR USE OF CRIMINAL HISTORY INFORMATION IN**
2 **HOUSING DECISIONS.**

3 (a) Regarding applicants or potential applicants for Affordable Housing, and their
4 household members, a Housing Provider shall not, at any time or by any means, inquire about, require
5 disclosure of, or if such information is received base an Adverse Action in whole or in part on:

6 (1) An Arrest not leading to a Conviction, excepting under circumstances identified
7 in this Section an Unresolved Arrest;

8 (2) Participation in or completion of a diversion or a deferral of judgment program;

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

12 (4) A Conviction or any other determination or adjudication in the juvenile justice
13 system, or information regarding a matter considered in or processed through the juvenile justice
14 system; ~~or~~

15 (5) A Conviction that is more than seven years old, the date of Conviction being the
16 date of sentencing; ~~or~~

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

19 Accordingly, the matters identified in this subsection (a) may not be considered in any manner
20 by the Housing Provider.

21 (b) The Housing Provider shall not require applicants for Affordable Housing to disclose
22 on any housing application the fact or details of any Conviction History, any Unresolved Arrest, or
23 any matter identified in subsections (a)(1)-(56). Nor shall the Housing Provider inquire on any
24 housing application about the fact or details of any Conviction History, any Unresolved Arrest, or any
25 matter identified in subsections (a)(1)-(56).

1 (c) The Housing Provider shall not require applicants for Affordable Housing to disclose,
2 and shall not inquire into, Conviction History until the Housing Provider has first determined:

3 (1) that the applicant is legally eligible to rent the housing unit; and
4 (2) that the applicant is qualified to rent the housing unit under the Housing
5 Provider's criteria for assessing rental history and credit history; provided, however, that this
6 subsection (c)(2) shall apply only if the Housing Provider uses rental history and credit history
7 information in determining qualifications of applicants for housing; and provided further, that this
8 subsection (c)(2) shall not preclude a Housing Provider from obtaining a Background Check Report at
9 the same time as the Housing Provider obtains the rental history report and credit history report for an
10 applicant, so long as the Housing Provider reviews the Background Check Report only after
11 determining based on rental history and credit history that the applicant is qualified to rent the housing
12 unit.

13 (d) Prior to any Conviction History inquiry, the Housing Provider shall provide a copy of the
14 notice described in Sections 4907(b) and (c) to the applicant.

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

20 (f) In making a housing decision related to Affordable Housing based on Conviction
21 History, a Housing Provider shall conduct an individualized assessment, considering only Directly-
22 Related Convictions, and the time that has elapsed since the Conviction or Unresolved Arrest, and
23 any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

24 (g) If a Housing Provider intends to base an Adverse Action related to Affordable
25 Housing on an item or items of in the applicant's Conviction History found in a Background

1 Check Report or otherwise known by the Housing Provider, prior to taking any Adverse Action
2 the Housing Provider shall notify provide the applicant in writing with a copy of the Background
3 Check Report, and shall notify the applicant of the prospective Adverse Action, and the items
4 forming the basis for the prospective Adverse Action, and the time period for the applicant to submit
5 further information to the Housing Provider, as provided in subsection (g).

6 (gh) If, within 14 days of the date that the notice described in subsection (g) is
7 provided by the Housing Provider to the applicant, the applicant gives the Housing Provider
8 notice, orally or in writing, of The applicant shall have 14 days from the Housing Provider's
9 sending of the notice described in subsection (f) to submit to the Housing Provider, orally or in
10 writing, evidence of the inaccuracy of the item or items of Conviction History and/or Evidence of
11 Rehabilitation or Other Mitigating Factors. If such information is submitted within that time
12 period, the Housing Provider shall delay any Adverse Action for a reasonable period after receipt of
13 the information and during that time shall reconsider the prospective Adverse Action in light of the
14 information.

15 (i) Upon If the Housing Provider then takes a taking any final Adverse Action based
16 upon the Conviction History of an against the applicant, the Housing Provider shall notify the
17 applicant of the final Adverse Action so advise the Applicant in writing.

18 (hj) It shall be unlawful for any Housing Provider to produce or disseminate any
19 advertisement related to Affordable Housing that expresses, directly or indirectly, that any person
20 with an arrest or conviction record will not be considered for the rental or lease of real property or
21 may not apply for the rental or lease of real property, except as required by local, state, or federal law.

22 **SEC. 49087. NOTICE AND POSTING REQUIREMENTS FOR HOUSING PROVIDERS.**

23 (a) The Housing Provider shall state in all solicitations or advertisements for the rental or
24 lease of residential real property Affordable Housing placed by the Housing Provider or on behalf

1 of the Housing Provider, that the Housing Provider will consider for tenancy qualified applicants with
2 criminal histories in a manner consistent with the requirements of this Article.

3 (b) The HRC shall, by the operative date of this Article, publish and make available to
4 Housing Providers, in English, Spanish, and Chinese, and all languages spoken by more than 5% of the
5 San Francisco population, a notice suitable for posting that informs applicants for the rental or lease
6 of residential real property Affordable Housing of their rights under this Article. The HRC shall
7 update this notice on December 1 of any year in which there is a change in the languages spoken by
8 more than 5% of the San Francisco population.

9 (c) Housing Providers shall post the notice prominently on their website and at any location
10 under their control that is frequently visited by applicants or potential applicants for the rental or lease
11 of residential real property Affordable Housing in San Francisco. At a minimum the notice
12 described above shall contain the following information:

13 (1) A description of those matters identified in Section 49076(a) that may not be
14 considered by the Housing Provider under any circumstances;

15 (2) A description of the restrictions and requirements that Section 49076 imposes on
16 Housing Providers when inquiring about Conviction History in connection with an application for the
17 rental or lease of residential real property Affordable Housing in San Francisco;

18 (3) The definition of Evidence of Rehabilitation and Other Mitigating
19 Circumstances Factors provided in Section 4903, and under what circumstances and timeline
20 under which the applicant or potential applicant has a right to provide such evidence as provided in
21 Section 4906(h); and

22 (4) The HRC telephone number and email address the applicant or potential
23 applicant may use to make a report if he or she believes the Housing Provider has violated any of the
24 provisions of Article 49.

25 **SEC. 49098. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

1 (a) It shall be unlawful for an Employer, Housing Provider, or any other person to interfere
2 with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Article.

3 (b) It shall be unlawful for an Employer to refuse to hire an applicant, or to discharge,
4 threaten to discharge, demote, suspend, or otherwise take Adverse Action against an employee in
5 retaliation for exercising rights protected under this Article. Such rights include but are not limited to:

6 (1) the right to file a complaint or inform any person about any Employer's alleged
7 violation of this Article;

8 (2) the right to inform any person about an Employer's alleged violation of this
9 Article;

10 (3) the right to cooperate with the OLSE or other persons in the investigation or
11 prosecution of any alleged violation of this Article;

12 (4) the right to oppose any policy, practice, or act that is unlawful under this Article;
13 or

14 (5) the right to inform any person of his or her rights under this Article.

15 (c) It shall be unlawful for a Housing Provider to interrupt, terminate, or fail or refuse to
16 initiate or conduct a transaction involving the rental or lease of residential real property, including
17 falsely representing that a residential unit is not available for rental or lease, or otherwise take Adverse
18 Action against a person in retaliation for exercising rights protected under this Article. Such rights
19 include but are not limited to:

20 (1) the right to file a complaint or inform any person about any Housing Provider's
21 alleged violation of this Article;

22 (2) the right to inform any person about a Housing Provider's alleged violation of
23 this Article;

24 (3) the right to cooperate with the HRC or other persons in the investigation or
25 prosecution of any alleged violation of this Article;

1 (4) the right to oppose any policy, practice, or act that is unlawful under this Article;

2 or

3 (5) the right to inform any person of his or her rights under this Article.

4 (d) Protections of this Section 49098 shall apply to any person who mistakenly but in good
5 faith alleges violations of this Article.

6 (e) Taking Adverse Action against a person within 90 days of the exercise of one or more of
7 the rights described in this Section 49098 shall create a rebuttable presumption that such Adverse
8 Action was taken in retaliation for the exercise of those rights.

9 **SEC. 49409. IMPLEMENTATION AND ENFORCEMENT OF EMPLOYMENT**

10 **PROVISIONS.**

11 (a) **Administrative Enforcement.**

12 (1) With regard to the employment provisions of this Article, the OLSE is authorized to take
13 appropriate steps to enforce this Article and coordinate enforcement, including the investigation of any
14 possible violations of this Article. Where the OLSE has reason to believe that a violation has occurred,
15 it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status
16 quo pending completion of a full investigation or hearing. ~~The OLSE's finding of a violation may~~
17 ~~not be based on the validity of the Employer's bona fide business reason for taking an~~
18 ~~Adverse Action against an applicant or employee based on his or her Conviction History.~~
19 ~~Instead, the Agency's review shall be limited to an Employer's adherence to procedural,~~
20 ~~posting and documentation requirements set forth in this Article. The OLSE shall not find a~~
21 violation based on an Employer's decision that an applicant or employee's Conviction History
22 is Directly Related, but otherwise may find a violation of this Article, including if the Employer
23 failed to conduct the individualized assessment as required under Section 4904(f).

24 (2) Where the OLSE determines that a violation has occurred, it may issue a determination
25 and order any appropriate relief, provided, however, that for a first violation, or for any violation

1 during the first twelve months following the operative date of this Article, the OLSE must issue
2 warnings and notices to correct, and offer the Employer technical assistance on how to comply with the
3 requirements of this Article. For a second violation, the OLSE may impose an administrative penalty
4 of no more than \$50.00 that the Employer must pay to the City for each employee or applicant as to
5 whom the violation occurred or continued. Thereafter, for subsequent violations, the penalty may
6 increase to no more than \$100, payable to the City for each employee or applicant whose rights were,
7 or continue to be, violated. Such funds shall be allocated to the OLSE and used to offset the costs of
8 implementing and enforcing this Article.

9 (3) If multiple employees or applicants are impacted by the same procedural violation at the
10 same time (e.g. all applicants for a certain job opening are asked for their Conviction History on the
11 initial application), the violation shall be treated as a single violation rather than multiple violations.

12 (4) Where prompt compliance is not forthcoming, the OLSE may refer the action to the City
13 Attorney to consider initiating a civil action pursuant to Subsection (b) .

14 (5) An employee, applicant or other person may report to the OLSE any suspected violation
15 of this Article within 60 days of the date the suspected violation occurred. The OLSE shall encourage
16 reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by
17 applicable laws, the name and other identifying information of the employee, applicant or person
18 reporting the violation; provided, however, that with the authorization of such person, the OLSE may
19 disclose his or her name and identifying information as necessary to enforce this Article or for other
20 appropriate purposes.

21 (6) The Director of the OLSE shall establish rules governing the administrative process for
22 determining and appealing violations of this Article. The Rules shall include procedures for:

- 23 (A) providing the Employer with notice that it may have violated this Article;
- 24 (B) providing the Employer with a right to respond to the notice;
- 25 (C) providing the Employer with notice of the OLSE's determination of a violation;

1 (D) providing the Employer with an opportunity to appeal the OLSE's determination
2 to a hearing officer, who is appointed by the City Controller or his or her designee.

3 (7) If there is no appeal of the OLSE's determination of a violation, that determination shall
4 constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any
5 petition or claim brought by the Employer against the City regarding the OLSE's determination of a
6 violation.

7 (8) If there is an appeal of the OLSE's determination of a violation, the hearing before the
8 hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any
9 such hearing, the OLSE's determination of a violation shall be considered prima facie evidence of a
10 violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that
11 the OLSE's determination of a violation is incorrect. The hearing officer's decision of the appeal shall
12 constitute the City's final decision. The sole means of review of the City's final decision, rendered by
13 the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of mandate
14 under Section 1094.5 of the California Code of Civil Procedure. The OLSE shall notify the Employer
15 of this right of review after issuance of the City's final decision by the hearing officer.

16 (b) **Civil Enforcement.** The City may bring a civil action in a court of competent
17 jurisdiction against the Employer or other person violating this Article, and, upon prevailing, shall be
18 entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but
19 not limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the
20 payment of an additional sum as liquidated damages in the amount of \$50.00 to each employee,
21 applicant or other person whose rights under this Article were violated for each day such violation
22 continued or was permitted to continue; appropriate injunctive relief; and, further shall be awarded
23 reasonable attorney's fees and costs.

1 (c) **Interest.** In any administrative or civil action brought under this Article, the OLSE or
2 court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest
3 specified in subdivision (b) of Section 3289 of the California Civil Code.

4 (d) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this
5 Article are cumulative.

6 (e) **Limitation on Actions.** Civil Actions to enforce the employment provisions of this
7 Article must be filed within one year after the date of the violation. This limitations period shall not
8 commence until the date the violation was discovered or could reasonably have been
9 discovered.

10 (f) **Tracking of Complaints.** OLSE shall maintain a record of the number and
11 types of complaints it receives alleging violations of this Article, and the resolution of those
12 complaints. This information shall be compiled on an annual calendar year basis and
13 reported to the Board of Supervisors by January 31 of each year.

14 **SEC. 49140. EMPLOYER RECORDS.**

15 (a) An Employer shall retain records of employment, application forms, and other pertinent
16 data and records required under this Article, for a period of three years, and shall allow the OLSE
17 access to such records, with appropriate notice and at a mutually agreeable time, to monitor
18 compliance with the requirements of this Article.

19 (b) An Employer shall provide information to the OLSE, or the OLSE's designee, on an
20 annual basis as may be required to verify the Employer's compliance with this Article.

21 (c) In no event shall the OLSE require an Employer to provide any information or
22 documents the disclosure of which would violate state or federal law.

23 (d) Where an Employer does not maintain or retain adequate records documenting
24 compliance with this Article or does not allow the OLSE reasonable access to such records, it shall be
25 presumed that the Employer did not comply with this Article, absent clear and convincing evidence

1 otherwise. The Office of Treasurer and Tax Collector shall have the authority to provide any and all
2 nonfinancial information to OLSE necessary to fulfill OLSE's responsibilities as the enforcing agency
3 under this Article. With regard to all such information provided by the Office of Treasurer and Tax
4 Collector, OLSE shall be subject to the confidentiality provisions of Subsection (a) of Section 6.22-1 of
5 the San Francisco Business and Tax Regulations Code.

6 (e) Pursuant to its rulemaking authority under this Article, the OLSE shall adopt rules that
7 establish procedures for Employers to maintain and retain accurate records and to provide annual
8 reporting of compliance to OLSE in a manner that does not require disclosure of any information that
9 would violate State or Federal privacy laws.

10 **SEC. 49121. IMPLEMENTATION AND ENFORCEMENT OF HOUSING PROVISIONS.**

11 **(a) Administrative Enforcement.**

12 (1) With regard to the housing provisions of this Article, the HRC, in consultation
13 with the Mayor's Office of Housing and Community Development, is authorized to take
14 appropriate steps to enforce this Article and coordinate enforcement, including the investigation of any
15 possible violations of this Article. The HRC shall not find a violation based on a Housing
16 Provider's decision that an applicant's Conviction History is Directly Related, but otherwise
17 may find a violation of this Article, including if the Housing Provider failed to conduct the
18 individualized assessment as required under Section 4906(f).

19 (2) Where the Director of HRC determines that a violation has occurred, he or she
20 may issue a determination and order any appropriate relief, provided, however, that for a first
21 violation, or for any violation during the first twelve months following the operative date of this Article,
22 the Director must issue warnings and notices to correct, and offer the Housing Provider technical
23 assistance on how to comply with the requirements of this Article. For a second violation, the Director
24 may impose an administrative penalty of no more than \$50.00 that the Housing Provider must pay for
25 each applicant as to whom the violation occurred or continued. Thereafter, for subsequent violations,

1 the penalty may increase to no more than \$100, payable to the City for each applicant whose rights
2 were, or continue to be, violated. Such funds shall be allocated to the HRC and used to offset the costs
3 of implementing and enforcing this Article.

4 (3) If multiple applicants are impacted by the same procedural violation at the same
5 time (e.g. all applicants for a certain housing unit are asked for their Conviction History on the initial
6 application), the violation shall be treated as a single violation rather than multiple violations.

7 (4) An applicant or other person may report to the HRC any suspected violation of
8 this Article within 60 days of the date the suspected violation occurred. The HRC shall encourage
9 reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by
10 applicable laws, the name and other identifying information of the employee, applicant or person
11 reporting the violation; provided, however, that with the authorization of such person, the HRC may
12 disclose his or her name and identifying information as necessary to enforce this Article or for other
13 appropriate purposes.

14 (5) The Director of the HRC, in consultation with the Mayor's Office of Housing
15 and Community Development, shall establish rules governing the administrative process for
16 determining and appealing violations of this Article. The Rules shall include procedures for:

17 (A) providing the Housing Provider with notice that it may have violated this Article;

18 (B) providing the Housing Provider with a right to respond to the notice;

19 (C) providing the Housing Provider with notice of the Director's determination of a
20 violation;

21 (D) providing the Housing Provider with an opportunity to appeal the Director's
22 determination to the HRC.

23 (6) If there is no appeal of the Director's determination of a violation, that
24 determination shall constitute a failure to exhaust administrative remedies, which shall serve as a
25

1 complete defense to any petition or claim brought by the Housing Provider against the City regarding
2 the Director's determination of a violation.

3 (7) If there is an appeal of the Director's determination of a violation, the City
4 Controller or his or her designee shall appoint a person, other than a member of the Commission, to
5 serve as a hearing officer. The hearing before the hearing officer shall be conducted in a manner that
6 satisfies the requirements of due process. In any such hearing, the Director's determination of a
7 violation shall be considered prima facie evidence of a violation, and the Housing Provider shall have
8 the burden of proving, by a preponderance of the evidence, that the Director's determination of a
9 violation is incorrect.

10 (8) If the hearing officer finds that the Housing Provider has engaged in conduct in
11 violation of this Article, the hearing officer shall issue an order requiring the Housing Provider to
12 cease and desist from the practice and to offer the housing accommodation to the applicant or
13 applicants under the terms for which the unit was offered to the public. The Housing Provider shall not
14 be required to offer the housing accommodation if the unit has already been rented or leased to a
15 tenant, but the Housing Provider shall be required to offer a comparable unit, if available, to the
16 applicant or applicants.

17 (9) The decision of the hearing officer shall be final unless the Commission vacates
18 his or her decision on appeal.

19 (10) Either party may file an appeal of the hearing officer's decision with the
20 Commission. Such an appeal to the Commission from the determination of the hearing officer must be
21 made within 15 days of the mailing of the decision and findings of fact. The appeal shall be in writing
22 and must state the grounds for appellant's claim that there was either error or abuse of discretion on
23 the part of the hearing officer. Each appeal shall be accompanied by a \$15 filing fee; provided,
24 however, the fee shall be waived for an individual who files an affidavit under penalty of perjury stating
25 that he or she is an indigent person who does not have and cannot obtain the money to pay the filing fee

1 without using money needed for the necessities of life. The filing of an appeal will not stay the effect of
2 the hearing officer's decision.

3 (11) Upon receipt of an appeal, the entire administrative record of the matter,
4 including the appeal, shall be filed with the Commission.

5 (12) The Commission may in its discretion determine to hear an appeal. In deciding
6 whether to hear an appeal, the Commission shall consider, among other things, fairness to the parties,
7 hardship to either party and promotion of the policies and purposes of this Article. In determining
8 whether to hear an appeal the Commission may also review material from the administrative record of
9 the matter as it deems necessary. A vote of the majority of the Commission shall be required for an
10 appeal to be heard.

11 (13) In those cases where the Commission is able to determine on the basis of the
12 documents before it that the hearing officer has erred, the Commission may without determining
13 whether to hear the appeal remand the case for further hearing in accordance with its instructions
14 without conducting an appeal hearing. Both parties shall be notified as to the time of the re-hearing,
15 which shall be conducted within 30 days of the remand by the Commission. In those cases where the
16 Commission is able to determine on the basis of the documents before it that the hearing officer's
17 findings contain numerical or clerical inaccuracies, or require clarification, the Commission may
18 continue the hearing for purposes of referring the case back to said hearing officer in order to correct
19 the findings.

20 (14) Appeals accepted by the Commission shall be heard within 45 days of the filing
21 of an appeal. Within 30 days of the filing of an appeal, both parties shall be notified in writing as to
22 whether the appeal has been accepted. If the appeal has been accepted, the notice shall state the time of
23 the hearing and the nature of the hearing. Such notice must be mailed at least 10 days prior to the
24 hearing.

1 (15) At the appeal hearing, the parties shall have an opportunity to present oral and
2 written argument in support of their positions. The Commission may in its discretion allow the parties
3 to present additional evidence that was not considered by the hearing officer. After such hearing and
4 after any further investigation which the Commission may deem necessary, the Commission may, upon
5 hearing the appeal, affirm, reverse or modify the hearing officer's decision or may remand the case for
6 further hearing in accordance with its findings. The Commission's decision must be rendered within 45
7 days of the completion of the hearing and the parties must be notified of such decision.

8 (16) In accordance with the above subsection, the Commission shall give the parties
9 written notice of the decision. The notice shall state that the decision is final.

10 (b) HRC shall maintain a record of the number and types of complaints it receives
11 alleging violations of this Article, and the resolution of those complaints. This information shall
12 be compiled on an annual calendar year basis and reported to the Board of Supervisors by
13 January 31 of each year.

14 **SEC. 49132. HOUSING PROVIDER RECORDS.**

15 (a) A Housing Provider shall maintain and retain records of tenant application forms, and
16 other pertinent data and records required under this Article, for a period of three years, and shall
17 allow the HRC access to such records, with appropriate notice and at a mutually agreeable time, to
18 monitor compliance with the requirements of this Article.

19 (b) A Housing Provider shall provide information to the HRC, or the HRC's designee, on an
20 annual basis as may be required to verify the Housing Provider's compliance with this Article.

21 (c) In no event shall the HRC require a Housing Provider to provide any information or
22 documents the disclosure of which would violate state or federal law.

23 (d) Where a Housing Provider does not maintain or retain adequate records documenting
24 compliance with this Article or does not allow the HRC reasonable access to such records, it shall be
25 presumed that the Housing Provider did not comply with this Article, absent clear and convincing

1 evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to provide any
2 and all nonfinancial information to the HRC necessary to fulfill the HRC's responsibilities as the
3 enforcing agency under this Article. With regard to all such information provided by the Office of
4 Treasurer and Tax Collector, the HRC shall be subject to the confidentiality provisions of Subsection
5 (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.

6 (e) Pursuant to its rulemaking authority under this Article, the HRC shall adopt rules that
7 establish procedures for Housing Providers to maintain and retain accurate records and to provide
8 annual reporting of compliance to the HRC in a manner that does not require disclosure of any
9 information that would violate State or Federal privacy laws.

10 **SEC. 49143. RULEMAKING.**

11 (a) The Director of OLSE shall have authority to adopt regulations and guidelines that
12 implement the employment provisions of this Article or that relate to provisions of this Article of
13 general import or applicability; provided, that the Director of OLSE may adopt regulations or
14 guidelines relating to provisions of general import or applicability only after consultation with the
15 Director of HRC and the Mayor's Office of Housing and Community Development.

16 (b) A designee of the Director of OLSE shall not have the authority under subsection (a) to
17 adopt regulations or guidelines. But, at the discretion of the Director of OLSE, a designee shall have
18 the authority to conduct hearings leading to the adoption of regulations or guidelines, and to consult
19 with the Director of HRC and the Mayor's Office of Housing and Community Development
20 regarding regulations or guidelines relating to provisions of general import or applicability.

21 (c) The HRC, in consultation with the Mayor's Office of Housing and Community
22 Development, shall have authority to adopt regulations and guidelines that implement the housing
23 provisions of this Article. The HRC may delegate this function to the Director of HRC.

24 (d) A designee of the Director of HRC shall not have the authority under subsection (c) to
25 adopt regulations or guidelines. But, at the discretion of the Director of HRC, a designee shall have

1 the authority to conduct hearings leading to the adoption of regulations or guidelines, and to consult
2 with the Director of OLSE and the Mayor's Office of Housing and Community Development
3 regarding regulations or guidelines relating to provisions of general import or applicability.

4 **SEC. 49154. OUTREACH.**

5 (a) The OLSE shall establish a community-based outreach program to conduct education
6 and outreach to employees, applicants, and potential applicants for employment regarding rights and
7 procedures under this Article. The program may be targeted at workers or potential workers in
8 industries or communities where, in the judgment of the OLSE, the need for education and outreach is
9 greatest.

10 (b) The HRC, in consultation with the Mayor's Office of Housing and Community
11 Development, shall establish a community-based outreach program to conduct education and
12 outreach to applicants and potential applicants for housing regarding rights and procedures under this
13 Article. The program may be targeted at individuals or communities where, in the judgment of the
14 HRC, the need for education and outreach is greatest.

15 (c) In establishing outreach programs as required by subsections (a) and (b), the OLSE and
16 the HRC may partner with each other and/or with community-based organizations. Nothing in this
17 Section 49134 shall preclude the OLSE or the HRC, by contract or grant, and consistent with other
18 provisions of City law, from engaging the services of such organizations in establishing such
19 community-based outreach programs, participating in such programs, or developing materials for such
20 programs. Nothing in this Section 49134 shall preclude the OLSE or the HRC from combining the
21 outreach programs required by subsections (a) and (b) with other related community outreach
22 programs.

23 **SEC. 49165. OTHER LEGAL REQUIREMENTS.**

24 This Article provides the minimum requirements pertaining to the protection of applicants for
25 employment, potential applicants for employment, employees, and applicants and potential applicants

1 for the rental and lease of residential real property, and shall not be construed to preempt, limit, or
2 otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, or,
3 with regard to employment, any provision of a collective bargaining agreement, that provides for
4 greater or other rights of or protections for applicants, potential applicants, or employees. This
5 provision shall apply both to laws, regulations, requirements, policies, standards, and collective
6 bargaining agreements in existence at the time the Article becomes operative, and to those that come
7 into existence thereafter.

8 **SEC. 49176. PREEMPTION.**

9 The City recognizes that in some circumstances state or federal law governs some of the matters
10 addressed in this Article. Nothing in this Article shall be interpreted or applied by a court or an
11 agency of City government so as to create any requirement, power, or duty in conflict with federal or
12 state law or with a requirement of any government agency, including any agency of City government,
13 implementing federal or state law. Consistent with the foregoing preemption principle, for example,
14 the OLSE and the HRC are authorized to not enforce any provision of this Article upon determining
15 that its application in a particular context would conflict with federal or state law or with a
16 requirement of a government agency implementing federal or state law. As another example
17 consistent with the foregoing preemption principle, Employers may inquire about criminal
18 convictions outside of the time periods set forth in this Article where required by federal or
19 state law or a government agency implementing federal or state law. These examples are
20 illustrative and do not limit the scope of the preemption principle stated in this Section 4916.

21 **SEC. 49187. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
22 **WELFARE.**

23 In enacting and implementing this Article, the City is assuming an undertaking only to promote
24 the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an
25

1 obligation for breach of which it is liable in money damages to any person who claims that such breach
2 proximately caused injury. This Article does not create a legally enforceable right against the City.

3 **SEC. 49198. SEVERABILITY.**

4 If any part or provision of this Article including but not limited to a section, subsection,
5 paragraph, sentence, phrase, or word, or the application thereof to any person or circumstance, is held
6 invalid, the remainder of the Article, including the application of such part or provision to other
7 persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To
8 this end, provisions of this Article are severable.

9 **SEC. 492019. OPERATIVE DATE.**

10 This Article shall become operative on 180 days after enactment and shall have prospective
11 effect only, measured from the operative date forward. Enactment occurs when the Mayor signs the
12 ordinance creating the Article, the Mayor returns the ordinance unsigned or does not sign the
13 ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the
14 ordinance.

15
16 Section 2. The San Francisco Administrative Code is hereby amended by adding
17 Chapter 12T, Sections 12T.1-12T.140 to read as follows:

18
19 **CHAPTER 12T: CITY CONTRACTOR/SUBCONTRACTOR CONSIDERATION**
20 **OF CRIMINAL HISTORY IN HIRING AND EMPLOYMENT DECISIONS**

21
22 **Sec. 12T.1. Definitions.**

23 **Sec. 12T.2. Applicability of Chapter to Contractors and Subcontractors.**

24 **Sec. 12T.3. All Contracts and Property Contracts to Include Provision**
25 **Requiring Compliance with this Chapter.**

1 Sec. 12T.4. Procedures for Contractor and Subcontractor Use of Criminal
2 History Information in Employment Decisions.

3 Sec. 12T.5. Notice and Posting Requirements for Contractors and
4 Subcontractors.

5 Sec. 12T.6. Implementation and Enforcement.

6 Sec. 12T.7. Contractor and Subcontractor Records.

7 Sec. 12T.8. Nonapplicability, Exceptions, and Waivers.

8 Sec. 12T.9. Preemption.

9 Sec. 12T.10. Severability.

10 Sec. 12T.11. Operative Date.

11
12 SEC. 12T.1. DEFINITIONS.

13 For the purposes of this Chapter, the following words and phrases shall mean and include:

14 “Adverse Action” shall have the same meaning as in Police Code Section 4903.

15 “Arrest” shall have the same meaning as in Police Code Section 4903.

16 “Background Check Report” shall have the same meaning as in Police Code Section 4903.

17 “Bid” shall mean a bid or proposal submitted to the City in response to an invitation for
18 bids or a request for proposals. “Bid” may include shall also mean a response to a request for
19 qualifications if no further ranking prior to Contractor selection is contemplated by the
20 procurement process.

21 “City” shall mean the City and County of San Francisco.

22 “Contract” shall mean an agreement for public works or improvements to be performed, or for
23 goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out
24 of moneys deposited in the treasury or out of trust moneys under the control or collected by the City,
25 and does not include Property eContracts, agreements entered into after June 1, 1997 pursuant to

1 settlement of legal proceedings, contracts for urgent litigation expenses as determined by the City
2 Attorney, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

3 “Contracting Officer” shall mean the department head or designee of the department
4 head.

5 “Contractor” shall mean any person or persons, firm, partnership, corporation, or
6 combination thereof, who enters into a Contract or Property Contract with a department head or
7 officer empowered by law to enter into Contracts or Property Contracts on the part of the City.

8 “Conviction” shall have the same meaning as in Police Code Section 4903.

9 “Conviction History” shall have the same meaning as in Police Code Section 4903.

10 “Directly-Related Conviction” shall have the same meaning as in Police Code Section 4903.

11 “Employment” shall have the same meaning as in Police Code Section 4903.

12 “Evidence of Rehabilitation or Other Mitigating Factors” shall have the same meaning as
13 in Police Code Section 4903.

14 “HRC” and “Director of HRC” shall have the same meaning as in Police Code Section
15 4903. ~~“HRC” and “Director of HRC” shall have the same meaning as in Police Code Section~~
16 4903.

17 “Inquire” shall have the same meaning as in Police Code Section 4903.

18 “OCA” shall mean the Office of Contract Administration or any successor department or
19 office. The “Director” of OCA shall mean the head of the OCA.

20 “OLSE” and “Director of OLSE” shall have the same meaning as in Police Code Section 4903.

21 “Person” shall have the same meaning as in Police Code Section 4903.

22 “Property Contract” shall mean a written agreement for the exclusive use or occupancy of real
23 property for a term exceeding 29 days in any calendar year, whether by singular or cumulative
24 instrument (i) for the operation or use by others of real property owned or controlled by the City for the
25 operation of a business, social, or other establishment or organization, including leases, concessions,

1 franchises and easements, or (ii) for the City's use or occupancy of real property owned by others,
2 including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive
3 use" means the right to use or occupy real property to the exclusion of others, other than the rights
4 reserved by the fee owner. "Property Contract" shall not include a revocable at-will use or
5 encroachment permit for the use of or encroachment on City property regardless of the ultimate
6 duration of such permit, except that " Property Contract" shall include such permits granted to a
7 private entity for the use of City property for the purpose of a for-profit activity. "Property eContract"
8 shall also not include street excavation, street construction or street use permits, agreements for the use
9 of City right-of-way where a contracting utility has the power of eminent domain, or agreements
10 governing the use of City property which constitutes a public forum for activities that are primarily for
11 the purpose of espousing or advocating causes or ideas and that are generally recognized as protected
12 by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

13 "Subcontract" shall mean an agreement to (i) provide goods and/or services, including
14 construction labor, materials or equipment, to a Contractor, if such goods or services are procured or
15 used in the fulfillment of the Contractor's obligations arising from a Contract with the City, or (ii) to
16 transfer the right to occupy or use all or a portion of a real property interest subject to a Property
17 Contract to a Subcontractor and pursuant to which the Contractor remains obligated under the
18 Property Contract.

19 "Subcontractor" shall means any person or persons, firm, partnership, corporation or any
20 combination thereof, who enters into a Subcontract with a Contractor. Such term shall include any
21 person or entity who enters into an agreement with any Subcontractor for the performance of 10
22 percent or more of any sSubcontract.

23 "Unresolved Arrest" shall have the same meaning as in Police Code Section 4903.

24 **SEC. 12T.2. APPLICABILITY OF CHAPTER TO CONTRACTORS AND**
25 **SUBCONTRACTORS.**

1 The requirements of this Chapter shall only apply to a Contractor's or Subcontractor's
2 operations within San Francisco, and only to the extent those operations are in furtherance of
3 performing a Contract or Property Contract with the City. Accordingly, the protections of this
4 Chapter apply only to applicants and employees who would be or are performing work in
5 furtherance of performing a Contract or Property Contract with the City.

6 **SEC. 12T.3. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE**
7 **PROVISION REQUIRING COMPLIANCE WITH THIS CHAPTER.**

8 All contracting agencies of the City, or any department thereof, acting for or on behalf of the
9 City, shall include in all Contracts and Property Contracts hereinafter executed or amended in any
10 manner or as to any portion thereof, a provision requiring Contractor's compliance with this Chapter
11 and shall require such Contractor to include a similar provision in all Subcontracts executed and
12 amended thereunder, and failure to do so shall constitute a material breach of contract.

13 **SEC. 12T.4. PROCEDURES FOR CONTRACTOR AND SUBCONTRACTOR USE OF**
14 **CRIMINAL HISTORY INFORMATION IN EMPLOYMENT DECISIONS.**

15 (a) Regarding applicants or potential applicants for employment, or employees, a
16 Contractor or Subcontractor shall not, at any time or by any means, inquire about, require
17 disclosure of, or if such information is received base an Adverse Action in whole or in part on:

18 (1) An Arrest not leading to a Conviction, excepting under circumstances
19 identified in this Section an Unresolved Arrest;

20 (2) Participation in or completion of a diversion or a deferral of judgment
21 program;

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

1 (4) A Conviction or any other determination or adjudication in the juvenile
2 justice system, or information regarding a matter considered in or processed through the
3 juvenile justice system; or

4 (5) A Conviction that is more than seven years old, the date of Conviction
5 being the date of sentencing.; or

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

8 Accordingly, the matters identified in this subsection (a) may not be considered in any
9 manner by the Contractor or Subcontractor.

10 ~~(ab) In making employment decisions, a Contractor or Subcontractor shall not require~~
11 ~~applicants or potential applicants for employment or its employees to disclose, orally or in writing,~~
12 ~~on any employment application the fact or details of any prior Conviction History, any Unresolved~~
13 ~~Arrest, or any matter identified in subsections (a)(1)-(6). Nor shall the Contractor or~~
14 ~~Subcontractor inquire including any inquiry about conviction history on any employment~~
15 ~~application about the fact or details of any Conviction History, any Unresolved Arrest, or any~~
16 ~~matter identified in subsections (a)(1)-(6), and shall not inquire into any prior Conviction~~
17 ~~History, until after the first live interview (via telephone, video conference or in person) or after~~
18 ~~a conditional offer of employment.~~

19 (bc) A Contractor or Subcontractor shall not require applicants or potential applicants
20 for employment, or employees, to disclose, and shall not inquire into, their Conviction History
21 or an Unresolved Arrest until either after the first live interview with the person (via telephone,
22 videoconferencing, use of other technology, or in person) or, at the discretion of the
23 Contractor or Subcontractor, after~~After the first interview or a conditional offer of employment,~~
24 ~~Contractor or Subcontractor may inquire about felony and misdemeanor convictions occurring~~
25

1 within the previous seven years. The Contractor or Subcontractor shall not inquire about, and
2 in the event that such information is received, shall not base an Adverse Action upon:

3 (1) An arrest not leading to a conviction unless required by state or federal
4 law;

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

7 (3) A conviction that has been judicially dismissed, for example, pursuant to
8 California Penal Code §§ 1203.4, 1203.4 or 1203.41.

9 (c) Notwithstanding the requirements of this section, if at any time an applicant or
10 employee spontaneously volunteers information about his or her Conviction History without
11 prompting by the Employer, the Employer may ask follow up questions and make further
12 inquiries about the applicant or employee's Conviction History.

13 (d) Prior to any Conviction History inquiry, the Employer Contractor or Subcontractor
14 shall provide a copy of the notice described in Section 4905(b) 12T.5(b) to the applicant or employee.

15 (e) Prior to obtaining a copy of a Background Check Report, the Employer Contractor or
16 Subcontractor shall comply with all state and federal requirements including but not limited to
17 California Investigative Consumer Reporting Agencies Act (ICRAA), California Civil Code sections
18 1786 et seq., and/or the Federal Consumer Reporting Act (FCRA), 15 United States Code
19 sections 1681 et seq., to provide notice to the applicant or employee that such a report is being
20 sought. For applicants or employees who elect to receive a copy of the report, the Employer
21 must also notify them of their right pursuant to this section to provide the Employer with
22 evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Circumstances
23 regarding any items of Conviction History found in the report, and that such information must
24 be received within 5 days of the date that the report is sent to the applicant or employee in
25 order to receive Employer consideration.

1 (ef) In making an employment decision based on an applicant's or employee's Conviction
2 History, a Contractor or Subcontractor shall conduct an individualized assessment, considering only
3 Directly-Related Convictions, the time that has elapsed since the eConviction or Unresolved Arrest,
4 and any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Circumstances
5 Factors.

6 (fg) If a Contractor or Subcontractor intends to base an Adverse Action on an item or items
7 of in the applicant or employee's Conviction History found in the applicant or employee
8 Background Check Report, prior to taking any Adverse Action the Contractor or Subcontractor
9 shall provide and the applicant or employee with a copy of the Background Check Report, and
10 shall notify the applicant or employee of the prospective Adverse Action and the item or items
11 forming the basis for the prospective Adverse Action.

12 (h) If, within seven days of the date that the notice described in subsection (g) is
13 provided by the Contractor or Subcontractor to the applicant or employee, the applicant or
14 employee gives the Contractor or Subcontractor notice, orally or in writing, of evidence of the
15 inaccuracy of the item or items of Conviction History or any Evidence of Rehabilitation or
16 Other Mitigating Factors, the Contractor or Subcontractor submits evidence of the items'
17 inaccuracy or Evidence of Rehabilitation or Other Mitigating Circumstances within the required
18 time period, the Employer shall delay any Adverse Action for a reasonable time period after receipt
19 of this evidence the information and during that time shall reconsider the proposed prospective
20 Adverse Action in light of this evidence the information.

21 (gj) Upon taking any final Adverse Action based upon the Conviction History of an
22 applicant or employee, a Contractor or Subcontractor shall give notify the applicant or employee
23 written notice of the final Adverse Action in a document that conforms to the requirements of
24 Police Code Section 4905(d).

1 (h) A Contractor or Subcontractor shall not produce or disseminate any solicitation or
2 advertisement that is reasonably likely to reach persons who are reasonably likely to seek
3 employment to be performed under a Contract or Property Contract and that expresses, directly
4 or indirectly, that any person with an ~~a~~Arrest or ~~e~~Conviction will not be considered for employment or
5 may not apply for employment, except as required by local, state, or federal law.

6 (i) Nothing in this Section 12T.4 shall be construed to prohibit a Contractor or
7 Subcontractor from observing the conditions of a seniority system or an employee benefit system plan,
8 provided such systems or plans are not a subterfuge to evade the purposes or requirements of this
9 Chapter.

10 **SEC. 12T.5. NOTICE AND POSTING REQUIREMENTS FOR CONTRACTORS AND**
11 **SUBCONTRACTORS.**

12 (a) The Contractor or Subcontractor will shall state in all solicitations or advertisements
13 for employees placed by or on his or her behalf that are reasonably likely to reach persons who
14 are reasonably likely to seek employment to be performed under a Contract or Property
15 Contract, that the Contractor or Subcontractor will consider for employment qualified applicants with
16 Conviction Histories criminal histories in a manner consistent with the requirements of this Chapter.

17 (b) ~~Notice of Rights under this Chapter.~~ The OLSE shall, by the operative date of this
18 Chapter, publish and make available to Contractors and Subcontractors, in English, Spanish,
19 Chinese, and all languages spoken by more than 5% of the San Francisco workforce, a notice
20 substantially similar in form and content to the notice described in Police Code Section 4905(b).
21 However, the notice shall cite this Chapter rather than Police Code Article 49 as the applicable legal
22 authority for the rights and obligations described therein.

23 (c) Contractors and Subcontractors shall post the notice described in subsection (b) in
24 a conspicuous place at every workplace, job site, or other location under the Contractor or
25 Subcontractor's control at which work is being done or will be done in furtherance of

1 performing a Contract or Property Contract with the City. The notice shall be posted in
2 English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the
3 workplace, job site, or other location at which it is posted ~~be subject to the same distribution~~
4 ~~and posting requirements for this notice as described in Police Code Section 4905(c).~~

5 (c) — ~~Final Adverse Action. The OLSE shall, by the operative date of this Article,~~
6 ~~publish and make available to Contractors and Subcontractors, a questionnaire to be~~
7 ~~completed by the Employer prior to taking any final Adverse Action against an applicant or~~
8 ~~employee on the basis of his or her Conviction History. The notice shall be substantially~~
9 ~~similar in form and content to the notice described in Police Code Section 4905(d). However,~~
10 ~~the notice shall cite this Chapter rather than Police Code Article 49 as the applicable legal~~
11 ~~authority for the rights and obligations described therein.~~

12 (d) — ~~Upon taking any final Adverse Action against an applicant or employee on the~~
13 ~~basis of his or her Conviction History, a Contractor or Subcontractor shall deliver to the~~
14 ~~applicant or employee a copy of the completed questionnaire described above.~~

15 **SEC 12T.6. IMPLEMENTATION AND ENFORCEMENT.**

16 (a) The OLSE is authorized to take appropriate steps to enforce and coordinate enforcement
17 of this Chapter, including the investigation of possible violations of this Chapter. The OLSE's finding
18 of a violation may not be based on the validity of the Contractor's or Subcontractor's bona fide
19 business reason for taking an Adverse Action against an applicant or employee based on his
20 or her Conviction History. Instead, the Agency's review shall be limited to a Contractor's or
21 Subcontractor's adherence to procedural, posting and documentation requirements set forth
22 in this Chapter. The OLSE shall not find a violation based on an Employer's a Contractor or
23 Subcontractor's decision that an applicant or employee's Conviction History is Directly-
24 Related, but otherwise may find a violation of this Article, including if the Employer Contractor
25 or Subcontractor failed to conduct the individualized assessment as required under Section

1 12T.4(f). If multiple employees or applicants are impacted by the same procedural violation at the
2 same time (e.g. all applicants for a certain job opening are asked for their conviction history on the
3 initial application), the violation shall be treated as a single violation rather than multiple violations.

4 (b) An employee, applicant or other person may report to the OLSE any suspected violation
5 of this Chapter. The OLSE shall encourage reporting pursuant to this subsection by keeping
6 confidential, to the maximum extent permitted by applicable laws, the name and other identifying
7 information of the employee or person reporting the violation; provided, however, that with the
8 authorization of such person, the OLSE may disclose his or her name and identifying information as
9 necessary to enforce this Chapter or for other appropriate purposes.

10 (c) A Contractor or Subcontractor shall be deemed to have breached the provisions
11 regarding the procedures for use of Conviction History in employment upon a finding by the OLSE that
12 the Contractor or Subcontractor has willfully violated these provisions, provided, however, that for a
13 first violation, or for any violation during the first twelve months following the operative date of this
14 Chapter, the OLSE must issue warnings and notices to correct, and offer the Contractor or
15 Subcontractor technical assistance on how to comply with the requirements of this Chapter.

16 (d) Upon a subsequent finding of a violation of this Chapter, the awarding authority shall
17 notify the Contractor or Subcontractor that unless the Contractor or Subcontractor demonstrates to the
18 satisfaction of the OLSE within such reasonable period as the OLSE shall determine, that the violation
19 has been corrected, action will be taken as set forth in subparagraphs (g) through (j) hereof.

20 (e) The Director of the OLSE shall establish rules governing the administrative process for
21 determining and appealing violations of this Chapter. The Rules shall include procedures for:

22 (1) providing the Contractor or Subcontractor with notice that it may have violated
23 this Chapter;

24 (2) providing the Contractor or Subcontractor with a right to respond to the notice;

1 (3) providing the Contractor or Subcontractor with notice of the OLSE's
2 determination of a violation;

3 (4) providing the Contractor with an opportunity to appeal the OLSE's
4 determination to a hearing officer, who is appointed by the City Controller or his or her designee.

5 (f) If there is an appeal of the OLSE's determination of a violation, the hearing before the
6 hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any
7 such hearing, the OLSE's determination of a violation shall be considered prima facie evidence of a
8 violation, and the Contractor or Subcontractor shall have the burden of proving, by a preponderance of
9 the evidence, that the OLSE's determination of a violation is incorrect. The hearing officer's decision
10 of the appeal shall constitute the City's final decision.

11 (g) For a second violation, the awarding authority may deduct from the amount payable to
12 the Contractor or Subcontractor by the City under any Contract subject to this Chapter, or the OLSE
13 may impose upon the Contractor or Subcontractor, a penalty of \$50 for each day or portion thereof
14 and for each employee, applicant or other person as to whom the violation occurred or continued.
15 Thereafter, for subsequent violations, the penalty may increase to no more than \$100, payable to the
16 City for each day or portion thereof, and for each employee or applicant whose rights were, or
17 continue to be, violated. Such funds shall be allocated to the OLSE and used to offset the costs of
18 implementing and enforcing this Chapter.

19 (h) In addition to any other penalties provided for the violation of this Chapter, the Contract
20 or ~~Subcontract~~ Property Contract may be terminated or suspended, in whole or in part, by the
21 awarding authority upon the basis of a finding ~~as set forth in subsection (f)~~ under this Section
22 12T.6 that the Contractor or Subcontractor has violated the provisions of this Chapter, and all
23 moneys due or to become due hereunder may be forfeited to, and retained by, the City.

24 (i) A violation of the provisions of this Chapter during the performance of a Contract, or
25 ~~Subcontract~~ Property Contract shall be deemed by the City to be a material breach of ~~C~~contract and

1 the basis for determination by the awarding authority that the Contractor or Subcontractor is an
2 irresponsible bidder as to all future contracts for which such Contractor or Subcontractor may submit
3 bids. Such Contractor or Subcontractor shall not for a period of up to two years thereafter, be allowed
4 to act as a Contractor or Subcontractor under any Contract or Property Contract. This subsection
5 (i) shall be governed by the procedures set forth in Chapter 28.

6 (j) Nothing contained in this Chapter shall be construed in any manner so as to prevent the
7 City from pursuing any other remedies that may be available at law, equity or under any Contract or
8 Property Contract.

9 (k) ~~Rulemaking Authority.~~ The Director of OLSE shall have authority to issue adopt
10 regulations or develop guidelines that implement the provisions of this Chapter. Regulations or
11 guidelines shall be adopted only after consultation with the Director of OCA. Regulations or
12 guidelines that relate to provisions of general import or applicability in Police Code Article 49
13 shall be adopted only after consultation with the Director of HRC and the Mayor's Office of
14 Housing and Community Development. A designee of the Director of OLSE shall not have the
15 authority to adopt regulations or guidelines under the foregoing first sentence of this
16 Section subsection (k); but at the discretion of the Director of OLSE a designee of the Director of
17 OLSE shall have the authority to conduct hearings leading to the adoption of regulations or
18 guidelines, and to consult with the Director of HRC, the Mayor's Office of Housing and
19 Community Development, and the Director of OCA as specified in this subsection (k).

20 (l) OLSE shall maintain a record of the number and types of complaints it receives
21 alleging a violation of this Chapter, and the resolution of those complaints. This information
22 shall be compiled on an annual calendar year basis and reported to the Board of Supervisors
23 by January 31 of each year.

24 **SEC. 12T.7. CONTRACTOR AND SUBCONTRACTOR RECORDS.**

1 (a) All Contractors and Subcontractors shall be subject to the same requirements for access
2 to and maintenance of employment records as described in Police Code Section 4910. In no event shall
3 OLSE require a Contractor or Subcontractor to provide any information or documents the disclosure
4 of which would violate state or federal law.

5 (b) A Contractor or Subcontractor shall provide information to the OLSE, or the OLSE's
6 designee, such information on an annual basis as may be required to verify the Contractor or
7 Subcontractor's compliance with this Article.

8 (c) Where a Contractor or Subcontractor does not maintain or retain adequate records
9 documenting compliance with this Chapter and does not allow OLSE reasonable access to such
10 records, it shall be presumed that the Contractor or Subcontractor did not comply with this
11 ArticleChapter 12T, absent clear and convincing evidence otherwise. The Office of Treasurer and
12 Tax Collector shall have the authority to provide any and all nonfinancial information to OLSE
13 necessary to fulfill OLSE's responsibilities as the enforcing agency under this Chapter. With regard to
14 all such information provided by the Office of Treasurer and Tax Collector, OLSE shall be subject to
15 the confidentiality provisions of Subsection (a) of Section 6.22-1 of the San Francisco Business and
16 Tax Regulations Code.

17 ~~(d) The OLSE shall promulgate rules and regulations for the implementation of this~~
18 ~~Chapter.~~

19 ~~SEC. 12T.8. CHAPTER APPLIES ONLY TO EMPLOYMENT PRACTICES OF~~
20 ~~CONTRACTORS AND SUBCONTRACTORS.~~

21 ~~This Chapter shall not confer upon the City and County of San Francisco or any~~
22 ~~agency, board or commission thereof any power not otherwise provided by law to determine~~
23 ~~the legality of any existing collective bargaining agreement and shall have application only to~~
24 ~~employment practices by contractors or subcontractors engaged in the performance of City~~
25 ~~and County contracts or property contracts.~~

1 SEC. 12T.98. NONAPPLICABILITY, EXCEPTIONS, AND WAIVERS.

2 (a) The OLSE Director of OCA shall waive the requirements of this Chapter under the
3 following circumstances:

4 (1) Whenever the OLSE Director of OCA finds, upon the advice of the awarding
5 authority, that there is only one prospective eContractor willing to enter into a Contract with the
6 City, or a pProperty eContract with the City for use of City property on the terms and conditions
7 established by the City, or that the needed goods, services, construction services for a public work or
8 improvement, or interest in or right to use real property are available only from a sole source, and the
9 prospective eContractor is not currently disqualified from doing business with the City, or from doing
10 business with any governmental agency based on any contract compliance requirements;

11 (2) If the contracting department, board or commission certifies in writing to the
12 OLSE OCA that pursuant to Administrative Code Sections 6.30 or 21.25 provisions the eContract
13 or pProperty eContract is necessary to respond to an emergency which endangers the public health or
14 safety and no entity which complies with the requirements of this Chapter capable of responding to the
15 emergency is immediately available; provided that such certification must be made prior to the
16 Controller's contract certification;

17 (3) Where the City Attorney certifies in writing to the OLSE OCA that the contract
18 involves specialized litigation requirements such that it would be in the best interests of the City to
19 wave the requirements of this Chapter.

20 (b) This Chapter shall not apply where the prospective eContractor is a public entity and
21 the OLSE Director of OCA finds that goods, services, construction services for a public work or
22 improvement or interest in or right to use real property of comparable quality or accessibility as are
23 available under the proposed eContract or pProperty eContract are not available from another
24 source, or that the proposed eContract or pProperty eContract is necessary to serve a substantial
25 public interest.

1 (c) This Chapter shall not apply where the ~~contracting officer~~ Director of OCA finds that
2 the requirements of this Chapter 12T will violate or are inconsistent with the terms or conditions of a
3 grant, subvention or agreement with a public agency or the instructions of an authorized representative
4 of any such agency with respect to any such grant, subvention or agreement, provided that the
5 contracting officer has made a good faith attempt to change the terms or conditions of any such grant,
6 subvention or agreement to authorize application of this Chapter.

7 (d) Subject to the requirements of subsection (e), ~~u~~Upon the request of a potential
8 eContractor or upon the eContracting eOfficer's own initiative, after taking all reasonable measures
9 to find an entity that complies with ~~the law~~ this Chapter 12T, the eContracting eOfficer may propose
10 a waiver of any or all of the requirements of this Chapter for any eContract, pProperty eContract or
11 bid package advertised and made available to the public, or any competitive or sealed bids received by
12 the City as of the operative date of ~~the enactment of this ordinance~~ Chapter under the following
13 circumstances:

14 (1) Where the eContracting eOfficer determines that there are no qualified
15 responsive bidders or prospective eContractors who could be certified by the OLSE as being in
16 compliance with the requirements of this Chapter and that the eContract or pProperty eContract is for
17 goods, a service, or a project that is essential to the City or City residents; or

18 (2) Where the eContracting eOfficer determines that transactions entered into
19 pursuant to bulk purchasing arrangements through federal, Sstate or regional entities which actually
20 reduce the City's purchasing costs would be in the best interests of the City; or

21 (3) Where the eContracting eOfficer determines that the requirements of this
22 Chapter would result in the City's entering into a eContract with an entity that was set up, or is being
23 used, for the purpose of evading the intent of this Chapter, ~~which is to prohibit the City from~~
24 entering into contracts with entities that discriminate based on the criteria set forth in this
25 Chapter;

1 (e) (4) The waiver authority granted to ~~e~~Contracting ~~e~~Officers in this Section 12T.98
2 shall be subject to the requirements that:

3 (iA1) All proposed waivers must be submitted for approval to the OLSE and
4 the Clerk of the Board of Supervisors-Director of OCA. All proposed waivers must set forth the
5 reasons the ~~e~~Contracting ~~e~~Officer is requesting the waiver, what steps were taken to find an entity that
6 complies with this Chapter, and why the waiver does not defeat the intent of this Chapter, which is to
7 prohibit the City from entering into ~~e~~Contracts and Property Contracts with ~~entities~~ persons that
8 do not comply with the requirements of this Chapter to follow certain procedures when inquiring about
9 and using criminal history information in employment and hiring decisions.

10 (B2) The Director of OCA shall take action approving or denying a
11 proposed waiver within 30 days of receiving a notification of the proposed waiver from a
12 contracting officer. If after 30 days the Director of OCA has taken no action on the proposed
13 waiver, the waiver shall be deemed approved. Such waivers shall be subject to the prior
14 approval of the OLSE, who shall take action approving or denying a proposed waiver within
15 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30
16 days the OLSE has taken no action on the proposed waiver, the waiver shall be deemed
17 approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at
18 the rear of the next available Board agenda, and

19 (iiB3) ~~Contracting officers~~ The Director of OCA or Contracting Officer
20 shall report to the OLSE whenever such a waiver is granted within five days of granting the waiver,
21 and

22 (f) (iiiC) For any ~~e~~Contract or Property Contract subject to approval by the
23 Board of Supervisors, the contracting officer shall state in the approving resolution shall state
24 whether any waiver or exception under this ~~s~~Section 12T.8 has been or is proposed to be granted for
25 that contract, and

1 _____(ivD) The OLSE shall conduct quarterly comprehensive reviews of the
2 use of the waiver authority by departments and shall make a report to the Board of
3 Supervisors. Contracting officers who have exercised waiver authority under this Section
4 12T.9 in the previous quarter must appear before a Board of Supervisors committee and
5 report on their use of such waiver authority. If the Board finds abuse of waiver authority by a
6 department under this Section, either as a result of a report of the OLSE or upon its own
7 initiative, the Board may by resolution transfer that waiver authority for that department to the
8 OLSE, to be exercised by the OLSE upon recommendation of the contracting officer under
9 any or all of the circumstances enumerated in this Section;

10 _____(5) Nothing in this sSection 12T.9 shall limit the right of the Board of
11 Supervisors to waive the provisions of this Chapter.

12 (eg) This Chapter 12T shall not apply to (i) the investment of trust moneys or agreements
13 relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or
14 under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer
15 finds that:

16 (1) No person, entity or financial institution doing business in the City and County
17 which is in compliance with this Chapter is capable of performing the desired transactions(s); or

18 (2) The City will incur a financial loss which in the opinion of the Treasurer would
19 violate his or her fiduciary duties.

20 This subsection (g) subparagraph (e) shall be subject to the requirement that City moneys
21 shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a
22 person, entity or financial institution other than the U.S. government which does not comply with this
23 Chapter.

24 (fh) The General Manager of the Public Utilities Commission may waive the requirements of
25 this Chapter 12T where the eContractor is providing wholesale or bulk water, power or natural gas,

1 the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control,
2 or loading scheduling, as required for assuring reliable services in accordance with good utility
3 practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase
4 of same may not practically be accomplished through the City's standard competitive bidding
5 procedures; and further provided that this exemption shall not apply to ~~€~~Contractors or franchisees
6 providing direct, retail services to end users within the City and County of San Francisco.

7 (gj) OCA shall maintain a record of all instances in which the requirements of this
8 Chapter have not been applicable to a Contract or Property Contract because of an exception
9 or a waiver as recognized under this Section 12T.8. This information shall be compiled on an
10 annual calendar year basis and reported to the Board of Supervisors by January 31 of each
11 year.

12 SEC. 12T.409. PREEMPTION.

13 The City recognizes that in some circumstances state or federal law governs some of
14 the matters addressed in this Chapter. Nothing in this Chapter shall be interpreted or applied
15 by a court or an agency of City government so as to create any requirement, power, or duty in
16 conflict with federal or state law or with a requirement of any government agency, including
17 any agency of City government, implementing federal or state law. Consistent with the
18 foregoing preemption principle, for example, the OLSE is authorized to not enforce any
19 provision of this Chapter upon determining that its application in a particular context would
20 conflict with federal or state law or with a requirement of a government agency implementing
21 federal or state law. As another example consistent with the foregoing preemption principle,
22 Contractors may inquire about criminal convictions outside of the time periods set forth in this
23 Article Chapter where required by federal or state law or a government agency implementing
24 federal or state law. These examples are illustrative and do not limit the scope of the
25 preemption principle stated in this Section 12T.409.

1 **SEC. 12T.410. SEVERABILITY.**

2 *If any part or provision of this Chapter, or the application thereof to any person or*
3 *circumstance, is held invalid, the remainder of the Chapter, including the application of such part or*
4 *provision to other persons or circumstances, shall not be affected thereby and shall continue in full*
5 *force and effect. To this end, provisions of this Chapter are severable.*

6 **SEC. 12T.121. OPERATIVE DATE.**

7 This Chapter shall become operative on 180 days after enactment and shall have
8 prospective effect only, measured from the operative date forward. Enactment occurs when
9 the Mayor signs the ordinance creating the Chapter, the Mayor returns the ordinance
10 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
11 Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 3. Effective Date and Operative Date.

14 (a) This ordinance shall become effective 30 days after enactment. Enactment
15 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
16 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
17 overrides the Mayor's veto of the ordinance.

18 (b) As stated in Police Code Section 4919 and Administrative Code Section
19 12T.121, tThis ordinance shall become operative 180 days after enactment and shall have
20 prospective effect only, measured from the operative date forward.

21
22 APPROVED AS TO FORM:
23 DENNIS J. HERRERA, City Attorney

24 By: _____
25 PAUL ZAREFSKY
Deputy City Attorney

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