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3 **ORDINANCE NO. 2022-617**

4 **An ordinance of the City of Gainesville, Florida, amending**  
5 **Chapter 14.5 of the Code of Ordinances, relating to**  
6 **miscellaneous business regulations by adding Article IX Fair**  
7 **Chance Hiring; providing findings of facts and definitions;**  
8 **enumerating fair chance hiring practices; setting forth**  
9 **administration, penalties, data and reporting; and amending**  
10 **Chapter 2, Sec. 2-339 of the Code of Ordinances, relating to civil**  
11 **citation applicable codes and ordinances; adding Article IX of**  
12 **Chapter 14.5 to the list of ordinances enforceable by the**  
13 **procedure described in Division 6 of Article V, Chapter 2;**  
14 **providing directions to the codifier, providing a severability**  
15 **clause; providing a repealing clause; and providing an**  
**immediate effective date.**

16 **WHEREAS, at least ten (10) days' notice has been given once by publication in a**  
17 **newspaper of general circulation notifying the public of this proposed ordinance and of public**  
18 **hearings; and**

19 **WHEREAS, the public hearings were held pursuant to the notice described above at which**  
20 **hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.**

21 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**  
22 **CITY OF GAINESVILLE, FLORIDA:**

23 **Section 1. Chapter 14.5 of the Code of Ordinances is amended by adding Article IX to**  
24 **read:**

25 **CHAPTER 14.5. – MISCELLANEOUS BUSINESS REGULATIONS**

26 **ARTICLE IX. FAIR CHANCE HIRING.**

27 **Sec. 14.5-177. – Authority.**

1           This article is enacted under the Home Rule Power of the City of Gainesville, Florida,  
2 in the interest of the health, peace, safety, and general welfare of the people of the city.

3 **Sec. 14.5-178. Scope.**

4           **(A) This article applies to any employer as defined in this Article.**

5           **(B) This article does not apply to a job/employment for which a federal, state, or local  
6 law, or compliance with legally mandated insurance or bond requirement disqualifies an  
7 individual based on criminal history.**

8           **(C) Nothing in this article limits an employer's authority to withdraw a conditional  
9 offer of employment for any lawful reason, including the determination that an individual is  
10 unsuitable for the job based on an individualized assessment of the individual's criminal history  
11 in accordance with well-settled federal and state law.**

12           **(D) Nothing in this article limits an individual's ability to seek redress under Title VII  
13 of the Civil Rights Act of 1964, Title VI of the Consumer Credit Protection Act (Fair Credit  
14 Reporting Act), the Florida Civil Rights Act of 1992, or any other federal or state legislation.**

15 **Sec. 14.5-179. Findings of fact.**

16           **(A) The city commission finds that denying an employment opportunity to an  
17 otherwise qualified person based on the person's criminal history that is not relevant to the job  
18 under consideration:**

19                   **(1) is unjust;**

20                   **(2) is detrimental to the health, safety, and welfare of the residents of the City;**

21                   **(3) prevents the reintegration of the person into the community;**

1           (4)     creates a burden on public resources and law enforcement;

2           (5)     contributes to crime and recidivism; and

3           (6)     contributes to unemployment and harms the local economy.

4           (B)     The city commission further finds that it is within the police power and the  
5 responsibility of the City to remedy the problems enumerated in subsection (A).

6     Sec. 14.5-180. Definitions.

7           In this article:

8           (A)     *Adverse action* means a refusal to hire, a refusal to promote, or the revocation of  
9 an offer of employment or promotion based on receipt or review of information detailing  
10 criminal history.

11          (B)     *Application* means a written or oral expression of interest in a job by an individual  
12 made in compliance with the employer's established criteria for receiving expressions of interest.

13          (C)     *Arrest* means being apprehended, detained, taken into custody, held for  
14 investigation, or restrained by a law enforcement agency due to an accusation or suspicion that  
15 the person committed a crime.

16          (D)     *Conditional Employment Offer* means an oral or written offer by an employer to  
17 employ an individual in a job, or placement in a staffing agency's staffing pool, that is  
18 conditioned solely on the employer's evaluation of the individual's criminal history, and may be  
19 conditioned on any pre-employment medical examinations authorized under the Americans with  
20 Disabilities Act (ADA).

1           (E)    ***Criminal accusation*** means an accusation that an individual has committed a  
2 crime, lodged by a law enforcement agency through an indictment, information, complaint, or  
3 other formal charge.

4           (F)    ***Criminal History*** means a conviction, plea of nolo contendere, or deferred  
5 adjudication arising from a felony or misdemeanor criminal accusation made under state law,  
6 federal law, or a comparable law of another state of the United States.

7           (G)    ***Employment*** means to work for an employer for pay. The term includes full time  
8 work, part time work, temporary or seasonal work, contract work, casual or contingent work,  
9 work through the services of a temporary or other employment agency, and participation in a  
10 vocational, apprenticeship, or educational training program.

11           (H)    ***Employer*** means any person, company, corporation, firm, labor organization, or  
12 association with fifteen (15) or more employees whose primary work location is in the City for  
13 each working day in each of four (4) or more calendar weeks in the current or preceding calendar  
14 year. The term includes an agency acting on behalf of an employer. The term does not include:

- 15                   (1)    the United States;
- 16                   (2)    a corporation wholly owned by the government of the United States;
- 17                   (3)    a club (other than a labor organization) that is exempt from taxation under  
18 Section 501(c) of the Internal Revenue Code;
- 19                   (4)    the state or a state agency;
- 20                   (5)    a political subdivision of the state;
- 21                   (6)    a child care facility as defined by Florida Statutes;

1           (7)    a care facility falling under Chapter 400 or Chapter 429 of the Florida  
2    Statutes; or

3           (8)    any other entity who is excluded by operation of state or federal law.

4           (I)    *Individualized assessment* means an evaluation of the criminal history of an  
5    individual that includes, at a minimum, the following factors:

6           (1)    the nature and gravity of any offenses in the individual's criminal history;

7           (2)    the age of the individual at the time of the offense;

8           (3)    the length of time since the offense and completion of the sentence;

9           (4)    the nature and duties of the job for which the individual has applied; and

10          (5)    any information demonstrating the individual's rehabilitation and good  
11          conduct since the occurrence of the criminal offense.

12          (J)    *Job* means an employment position with an employer for which the employer has  
13    solicited or accepted applications and which the employer is currently attempting to fill.

14          (K)    *Staffing agency* means an employer that:

15          (1)    assigns individuals employed by it to perform work for another employer;

16          and

17          (2)    retains the obligation to pay such individuals for the work performed for  
18          the other employer.

19          (L)    *Staffing pool* means a list of individuals retained by a staffing agency before the  
20    assignment of a specific job to perform for another employer.

1   **Sec. 14.5-181. Fair chance hiring practices.**

2           **(A)    An employer may not publish or cause to be published information about a job**  
3 **covered by this article that states or implies that an individual's criminal history automatically**  
4 **disqualifies the individual from consideration for the job.**

5           **(B)    An employer may not solicit or otherwise inquire about the criminal history of an**  
6 **individual in an application for a job covered by this article.**

7           **(C)    An employer may not solicit from the applicant or otherwise inquire through**  
8 **third-parties about an arrest or criminal accusation made against an individual, other than an**  
9 **arrest or criminal accusation relating to domestic violence, which:**

10           **a.     is not then pending against the applicant; or**

11           **b.     did not result in a conviction, plea of nolo contendere, or deferred adjudication.**

12           **(D)    An employer may not solicit criminal history information about an individual or**  
13 **consider an individual's criminal history unless the employer has first made a conditional**  
14 **employment offer to the individual. This does not preclude an employer from explaining to**  
15 **applicants, in writing, the individualized assessment system that the employer uses to consider**  
16 **criminal history.**

17           **(E)    An employer may not refuse to consider employing an individual in a job covered**  
18 **by this article because the individual did not provide criminal history information before the**  
19 **individual received a conditional employment offer.**

20           **(F)    An employer may not take adverse action against an individual because of the**  
21 **individual's criminal history unless the employer has determined that the individual is unsuitable**  
22 **for the job based on an individualized assessment conducted by the employer.**

1           **(G) Prior to taking adverse action against an individual because of the individual's**  
2 **criminal history, an employer must:**

- 3           **a. inform the individual of the basis for the decision;**
- 4           **b. provide the individual with the criminal history records used by the employer in**  
5 **consideration of the individual's application; and**
- 6           **c. provide the individual a reasonable opportunity to provide the employer with**  
7 **additional context about the criminal history records and any information**  
8 **demonstrating the individual's rehabilitation and good conduct since the**  
9 **occurrence of the criminal offense.**

10           **(H) An employer who takes adverse action against an individual based on the**  
11 **individual's criminal history must inform the individual in writing that:**

- 12           **a. the adverse action was based on the individual's criminal history; and**
- 13           **b. include the following statement in the notice:**  
14           **This notice is provided in accordance with the City of Gainesville Code of**  
15 **Ordinances, Chapter 14.5, Section 14.5-181, which regulates the process and**  
16 **timing of criminal background checks conducted on job applicants.**

17           **(I) Nothing in this article shall be construed as precluding an employer from**  
18 **exercising discretion to not hire an applicant for any lawful reason, including the determination**  
19 **that an individual is unsuitable for the job based on an individualized assessment of the**  
20 **individual's criminal history in accordance with well-settled federal and state law.**

21           **(J) Notwithstanding any other part of this article, a staffing agency may solicit**  
22 **criminal history information about an individual and make an individualized assessment of an**

1 individual's criminal history when the staffing agency has identified a job to which the individual  
2 will be employed or placed in a staffing pool.

3 **Sec. 14.5-182. Retaliation prohibited.**

4 An employer may not take adverse action against an individual because the individual  
5 has reported a violation of this article by an employer, or has participated in an administrative  
6 proceeding under this article.

7 **Sec. 14.5-183. Administration.**

8 (A) The Office of Equity and Inclusion shall:

- 9 (1) educate employers and residents about this article;
- 10 (2) receive and investigate complaints alleging a violation of this article;
- 11 (3) enforce this article; and
- 12 (4) adopt rules necessary to implement this article.

13 (B) To be considered by the Office of Equity and Inclusion, a complaint alleging a  
14 violation of this article must be filed with the Office of Equity and Inclusion no later than the  
15 90<sup>th</sup> calendar day after the individual receives knowledge of the alleged violation, but in no event  
16 later than 180 days from the date of the alleged violation.

17 (C) For purposes of enforcement of this article, employees of the Office of Equity  
18 and Inclusion may receive appropriate training and be designated code enforcement officers as  
19 provided in Sec. 2-337(a).



1           (D)    If the Office of Equity and Inclusion finds that a violation of this ordinance has  
2 occurred, the Office of Equity and Inclusion shall provide notice to the employer and issue a  
3 civil citation as provided in Sec. 14.5-184

4           Sec. 14.5-184. Penalties.

5           The city may enforce this article by civil citation in accordance with division 6, article  
6 V, chapter 2, except the following additional procedures shall apply:

7           (A)    Half of any civil penalty recovered under this article shall be awarded to the  
8 complainant.

9           (B)    For the first violation of this article, an employer will be subject to a civil penalty  
10 in the amount of \$500.

11          (C)    For each subsequent violation of this article, an employer will be subject to a civil  
12 penalty in the amount of \$500.

13          (D)    An employer shall only be subject to one civil penalty assessment per  
14 advertisement about a job covered by this article, or per application that violates this article.

15          (E)    For a first-time violation of this article by an employer, the Office of Equity and  
16 Inclusion may instead issue a warning if the employer attends an appropriate training session  
17 about compliance with this article.

18          Sec. 14.5-185. Data and reporting.

19          (A)    The Office of Equity and Inclusion shall maintain data on the number of  
20                complaints

1 filed pursuant to this article, demographic information on the complainants, the  
2 number of investigations it conducts, and the disposition of every complaint and  
3 investigation.

4 (B) Data maintained by the Office of Equity and Inclusion pursuant to subsection (A)  
5 of this section shall be submitted to the city commission annually, beginning one  
6 year from the effective date of this ordinance.

7 **Section 2.** Chapter 2, Section 2-339, “Applicable codes and ordinances,” of the Code of  
8 Ordinances of the City of Gainesville is amended to add the following:

Section	Description	Class	Penalty
<u>Article IX of Chapter 14.5</u>	<u>Fair Chance Hiring</u>	<u>IV</u>	\$500

9  
10 **Section 3.** It is the intention of the City Commission that the provisions of Sections 1  
11 and 2 of this Ordinance shall become and be made a part of the Charter and the Code of  
12 Ordinances of the City of Gainesville, Florida, and that the sections and paragraphs of this  
13 Ordinance may be renumbered or relettered in order to accomplish such intentions.

14 **Section 4.** If any word, phrase, clause, paragraph, section or provision of this ordinance  
15 or the application hereof to any person or circumstance is held invalid or unconstitutional, such  
16 finding shall not affect the other provisions or applications of this ordinance that can be given  
17 effect without the invalid or unconstitutional provision or application, and to this end the  
18 provisions of this ordinance are declared severable.

19 **Section 5.** All ordinances or parts of ordinances in conflict herewith are to the extent of  
20 such conflict hereby repealed.

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**Section 6.** This ordinance shall become effective immediately upon adoption.

**PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

\_\_\_\_\_  
Lauren Poe  
Mayor

**ATTEST:** Approved as to form and legality

\_\_\_\_\_  
Omichele D. Gainey  
City Clerk

\_\_\_\_\_  
Daniel M. Nee  
Interim City Attorney

This ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2022.

This ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2022.