

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 90th 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 15th DAY OF DECEMBER, 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 29th day of November, 2022.

This ordinance passed on second reading this 15th day of December, 2022.