

City of Syracuse

CITY CLERK'S OFFICE

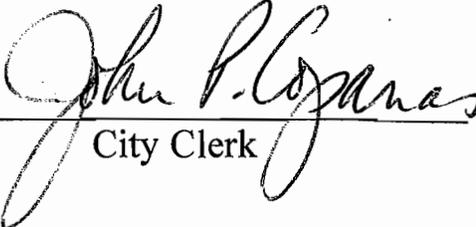
I, JOHN P. COPANAS, City Clerk of the City of Syracuse, New York do hereby certify that the attached is a true copy of an ORDINANCE:

Adopted by the Common Council on

December 8, 2014

Under operation of Law

December 22, 2014


City Clerk

TO:

- Mayor
- Assessment Commissioner
- Aviation Commissioner
- Board of Elections
- Bureau of Accounts
- Citizen Review Board
- City Auditor
- City School District
- Code Enforcement
- Neighborhood and Business Development
- Finance Commissioner
- Corporation Counsel
- United States Congressperson
- Governor of New York State
- New York State Senate
- New York State Assembly
- New York State Senator
- Onondaga County Legislature

- Management & Budget Director
- Parks & Recreation Commissioner
- Personnel & Labor Relations Dir.
- Police Chief
- Public Works Commissioner
- Public Works/Bookkeeper
- Purchase Department
- Real Estate Division
- Research Director
- Water Department
- Zoning Administration
- United States Senator
- Department of Engineering
- Finance/Treasury
- Finance (Water Bureau)
- Fire Chief
- Grants Management Director
- Board of Education

GENERAL ORDINANCE TO ADD A NEW CHAPTER 53 TO THE REVISED GENERAL ORDINANCES OF THE CITY OF SYRACUSE, AS AMENDED, TO ADDRESS EMPLOYMENT AND LICENSURE BY THE CITY OF SYRACUSE AND CONTRACTORS OF THE CITY OF SYRACUSE OF PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

BE IT ORDAINED, that the Revised General Ordinances of the City of Syracuse, as amended, are hereby amended to add a new Chapter 53 of the Revised General Ordinances of the City of Syracuse, as amended, that shall address the employment and licensure of persons previously convicted of one or more criminal offenses by the City of Syracuse, New York and certain contractors who do business with the City of Syracuse; and

BE IT FURTHER ORDAINED, that the provisions of this Ordinance shall conform to the existing requirements in New York State Correction Law and New York State Human Rights Law, along with all applicable provisions established by the Federal Government; and

BE IT FURTHER ORDAINED, that Chapter 53 of the Revised General Ordinances of the City of Syracuse, as amended, shall read as follows:

CHAPTER 53. SYRACUSE FAIR EMPLOYMENT AND LICENSURE ORDINANCE

Article I. GENERAL PROVISIONS

Sec. 53-1. Title

This Chapter shall be known as the Syracuse Fair Employment and Licensure Ordinance.

Sec. 53-2. Purpose.

The purpose of this Article is to establish regulatory controls in accordance with existing New York State Law to ensure that persons who were previously convicted of one or more criminal offenses have a fair opportunity to obtain employment and licensure from the City of Syracuse,

while still affirming the right of the City of Syracuse and contractors to whom this ordinance is applicable to deny employment or licensure to applicants who fail to meet either the direct relationship or unreasonable risk tests outlined in Article 23-A of the New York State Correction Law.

Sec. 53-3. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

- A. Applicant shall mean any person considered or who requests to be considered for employment or licensure by the City of Syracuse.
- B. Awarding Authority shall mean any agency, department, or office of the City of Syracuse that is responsible for formulating, soliciting, or reviewing proposals, bids, or for administering service contracts. For purposes of this Ordinance, awarding authority shall also mean any official, agent, or committee that is formed or designated by the City to consider, make decisions or to make effective recommendations regarding the same.
- C. City shall mean the City of Syracuse, New York, its departments, offices, and agencies.
- D. Contractor shall mean any person, vendor, business enterprise or entity that enters into a service contract or concession agreement with the City, or otherwise supplies goods and/or services to, or on behalf, of the City.
- E. Criminal Conviction shall mean entry of a plea of guilty or a verdict of guilty after a trial, for a misdemeanor or felony offense in the State of New York or any other jurisdiction.
 - i) Consistent with New York State Executive Law §296 (16), entitled "Unlawful Discriminatory Practices" Criminal Conviction shall not include any arrest or criminal accusation of such individual not then pending against that individual which was followed by:
 - a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law; or
 - by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law; or
 - by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law; or
 - by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; and

- ii) For purposes of this Ordinance, Criminal Conviction also shall not include (a) any arrest or adjudication of such individual which was processed as a Juvenile Delinquency proceeding in Family Court; or b) any arrest or conviction of such person in a jurisdiction other than New York which was sealed, annulled, pardoned, expunged, or deemed a legal nullity, or confidential as a result of legal process; and
 - iii) provided, further that no person shall be required to divulge information pertaining to any arrest, criminal accusation, or disposition referred to above in Section 53-3 (E) (i) and (ii).
- F. Criminal History Inquiry shall mean any direct or indirect inquiry intended to gather information from or about an Applicant's prior criminal history or convictions for purposes of employment or a license, which includes, but is not limited to application forms, interviews, online inquiries, and Criminal History Reports.
- G. Criminal History Report shall mean a report produced as a result of a Criminal History Inquiry through any public or private entity, including law enforcement and consumer reporting agencies.
- H. Employer shall mean the City of Syracuse, New York.
- I. Employment shall mean any occupation, vocation, job, work for pay, including temporary or seasonal work, or any form of vocational or educational training. Provided, however, that Employment shall not, for the purposes of this Chapter, include employment by any government law enforcement agency or any position classified as a police officer or peace officer pursuant to New York State Criminal Procedure Law.
- J. License shall mean any certificate, license or grant of permission required by the laws of the State of New York, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business or profession. Provided, however that license shall not, for the purposes of this Chapter, include any license or permit to own, possess, carry or fire any explosive, pistol, handgun, rifle, shotgun or other firearm.
- K. Licensure shall mean the granting of a license.

Sec. 53-4. Criminal History Inquiry Practice and Procedure for Employment with the City of Syracuse

A. When A Criminal History Inquiry May Be Conducted

In connection with the consideration of an application for employment with the City no Criminal History Inquiry may be required of an applicant during the application process.

The application process shall be deemed to begin when the applicant inquires about the employment sought and shall end when an employer has determined the applicant to be qualified for employment and has extended a conditional offer of employment.

Notwithstanding the above provision, there shall be an exception to this procedure where the City is hiring for an employment position that pursuant to other applicable law the City shall be barred from hiring an individual with certain convictions or violations. In those circumstances, the City shall not be constrained from asking questions about convictions or violations prior to the applicant having been determined to be qualified for such employment and having been extended a conditional offer of employment.

B. Procedure for Conducting A Criminal History Inquiry

In conducting a criminal history inquiry, the City may inquire about and consider only criminal convictions as defined in Sec. 53-3 above, in accordance with Article 23-A of the New York Correction Law and relevant sections of New York Executive Law.

C. Rescission of a Conditional Offer of Employment

Any rescission of a conditional offer of employment based on a criminal conviction revealed after the Criminal History Inquiry shall be done in accordance with the requirements of Article 23-A of the New York State Correction Law, as amended from time to time. The City shall apply the direct relationship test or the unreasonable risk test found in Section 752 of New York State Correction Law and shall consider the factors to be considered concerning a previous criminal conviction enumerated in Section 753 of New York State Correction Law.

Nothing in this Chapter shall be construed to limit the City's authority to withdraw a conditional offer of employment upon the determination in accordance with the requirements of Article 23-A of the New York State Correction Law that there is a direct relationship between one or more of the prior criminal convictions and the specific position of employment sought by the applicant or upon the determination that the granting of the specific position of employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

If the City is considering rescission of a conditional employment offer based upon information obtained from a Criminal History Report, the City shall notify the Applicant of the potential adverse employment action and provide the Applicant with a copy of the Criminal History Report, highlighting or identifying the conviction(s) that warrant a rescission of such conditional employment offer. The Applicant may, within five (5) business days or such greater period as required by applicable law, after delivery of the notice and Criminal History Report by the City, provide the City information and/or documentation regarding the accuracy and relevance of the Criminal History Report, including information and/or documentation pertaining to the factors in New York State Correction Law section 753, as amended from time to time. The City shall review all of

the information and/or documentation that are provided by the Applicant within the aforementioned five (5) business day timeframe prior to taking any final action.

D. Intentional Misrepresentation

Except, as provided herein, nothing in this Chapter shall be construed to affect any right the City may have with respect to an intentional misrepresentation made by the applicant in connection with an application for Employment.

E. Licensed Trades or Professions

Notwithstanding any provision to the contrary in this Chapter, where the City hires for licensed trades or professions, including provisions such as interns and apprentices for such licensed positions, the City may make an inquiry of an applicant about prior criminal convictions if such inquiry is required by New York State or Federal Law.

Sec. 53-5. Criminal History Inquiry Practice and Procedure for Licensure from the City of Syracuse

A. When A Criminal History Inquiry May Be Conducted

In connection with the consideration of an application for a License from the City no Criminal History Inquiry may be required of an applicant during the application process. The application process shall be deemed to begin when the applicant inquires about the license sought and shall end when the City has determined the applicant to be qualified for license.

Notwithstanding the above provision, there shall be an exception to this procedure where the City is providing a license that pursuant to other applicable law the City shall be barred from granting to an individual with certain convictions or violations. In those circumstances, the City shall not be constrained from asking questions about convictions or violations prior to the applicant having been determined to be qualified for such license.

B. Procedure for Conducting A Criminal History Inquiry

In conducting a criminal history inquiry, the City may inquire about and consider only Criminal Convictions as defined in Sec. 53-3 above, in accordance with Article 23-A of the New York Correction Law and relevant sections of New York Executive Law.

C. Denial of a License

Any denial of a license based on a criminal conviction revealed after the Criminal History Inquiry shall be done in accordance with the requirements of Article 23-A of the New York State Correction Law, as amended from time to time. The City shall apply the direct relationship test or the unreasonable risk test found in Section 752 of New York State Correction and shall consider the factors to be considered concerning a previous criminal conviction enumerated in Section 753 of New York State Correction Law.

Nothing in this Chapter shall be construed to limit the City's authority to deny a license upon the determination in accordance with the requirements of Article 23-A of the New York State Correction that there is a direct relationship between one or more of the prior criminal convictions and the specific license sought by the applicant or upon the determination that the granting of the specific license would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

If the City is considering denial of a license based upon information obtained from a Criminal History Report, the City shall notify the Applicant of the potential adverse action and provide the Applicant with a copy of the Criminal History Report, highlighting or identifying the conviction(s) that warrant a rescission of such conditional employment offer. The Applicant may, within five (5) business days or such greater period as required by applicable law, after delivery of the notice and Criminal History Report by the City, provide the City information and/or documentation regarding the accuracy and relevance of the Criminal History Report, including information and/or documentation pertaining to the factors in New York State Correction Law section 753, as amended from time to time. The City shall review all of the information and/or documentation that are provided by the Applicant within the aforementioned five (5) business day timeframe prior to taking any final action.

D. Intentional Misrepresentation

Except, as provided herein, nothing in this Chapter shall be construed to affect any right the City may have with respect to an intentional misrepresentation made by the applicant in connection with an application for the license.

Sec. 53-6. Criminal History Inquiry Practice and Procedure Applicable to Contractors

A. Applicability

Contractors shall be subject to this Ordinance to the same extent as the City.

B. City Purchase of Goods and Services

All City requests for proposals, contracts, and agreements for goods and services, including concession agreements, shall include the following or substantially similar language:

“This contract is subject to the Fair Employment and Licensure Opportunity Ordinance of the City of Syracuse. This Ordinance requires that all City Contractors shall not include any question about a job applicant’s prior criminal history on the job application and shall defer making any criminal history inquiry about a job applicant’s past criminal convictions until after a conditional offer of employment is made. The City shall have the authority to suspend and terminate the contract for violations of the Fair Employment and Licensure Opportunity Ordinance.”

C. Criminal History Inquiry

The Awarding Authority is authorized to review a Contractor’s Criminal History Inquiry Practices and Procedures for compliance with this Ordinance as part of the criteria to be evaluated by the Awarding Authority as to whether to award a City contract.

Sec. 53-7. Enforcement

A. Compliance Audit

In an effort to prevent unlawful discrimination against applicants for employment with the City of Syracuse or contractors of the City of Syracuse, as defined in Section 53-3 of this Ordinance, it shall be the responsibility of the Office of the Auditor of the City of Syracuse, to conduct an audit reviewing the hiring practices and compliance with this Ordinance by the City and its contractors. The initial audit report shall be submitted to the Mayor and Common Council, one hundred and twenty (120) days after the adoption of this Ordinance, and an annual report shall be submitted to the Mayor and Common Council annually thereafter.

B. Suspension or Termination of Contracts

The City shall have the authority to suspend and terminate any contract or agreement that is in violation of this Ordinance.

C. Commencement of a Civil Action against a Contractor

Any person aggrieved by a violation of this Ordinance may commence a civil action or proceeding for injunctive relief, damages or other appropriate relief in law or equity against any Contractor who violates this Ordinance. In any such action or proceeding, the court may allow the party commencing such action or proceeding, if such party prevails, costs

and reasonable attorney's fees as part of the relief granted.

D. Action by Corporation Counsel against a Contractor

The Corporation Counsel may, in his or her discretion, bring an action to restrain or prevent any violation of this Ordinance or any continuance of any violation of this Ordinance by any Contractor covered by this Ordinance, in any court of competent jurisdiction and may further seek the imposition of the following penalties or a combination thereof:

(i) A penalty of five hundred dollars (\$500.00) for the first violation of this Ordinance;

(ii) A penalty of one thousand dollars (\$1,000.00) for each subsequent violation of this Ordinance.

E. Article 78 Proceeding

Notwithstanding the above paragraphs or sentences or any other provisions to the contrary, no party or person may recover damages, costs, penalties, or attorney's fees from or against the City for a violation of this Ordinance. A proceeding commenced pursuant to Article 78 of the New York State Civil Practice Law and Rules shall be the sole remedy available against the City for a violation of this Ordinance.

F. Statute of Limitations

Any action brought for violation of this Ordinance must be commenced within one year after the date the alleged violation occurred.

G. Remedies

The remedies provided herein shall be separate and distinct from any remedies provided in other laws, rules or regulations; and shall not be construed by any court to be a prerequisite to an action or proceeding commenced pursuant to such other laws, rules or regulations. The provisions of this Ordinance shall not be construed to diminish the rights of an applicant under any other law.

H. Ordinance Availability

The City shall make information about the provisions of this Ordinance available to the public and its Contractors.

Sec. 53-8. Exceptions to this Ordinance

This Ordinance shall not apply to the following: (1) The City of Syracuse Police Department or any "police officer" and "peace officer" positions, as defined by New York State Criminal Procedure Law Sections 1.20 and 2.10, as amended from time to time; and (2) Inquiries or adverse actions specifically authorized or imposed pursuant to applicable law.

Sec. 53-9. Emergency Powers

The Mayor of the City of Syracuse may temporarily suspend the applicability of this Ordinance to any Contractor, or prospective Contractor, whenever, in his or her opinion, a specific exigent circumstance or public emergency condition necessitates the Contractor's, or prospective Contractor's, delivering of goods to or providing services for or to, the City. Such suspension shall remain in effect so long as the exigent circumstance or public emergency condition exists, or until such suspension is terminated by the Mayor, but the suspension period shall be no longer than three (3) months.

An extension of the three (3) month suspension period may be granted by the Mayor with the consent of a majority of the Common Council in order to abide the cessation of the exigent circumstances or public emergency condition.

Sec. 53-10. Severability

If any provision of this Ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

Sec. 53-11. Effective Date

This Ordinance shall take effect ninety (90) days from the date of its passage.

;and

BE IT FURTHER ORDAINED, that all Chapters of the Revised General Ordinances of the City of Syracuse, as amended, not amended by this Ordinance shall remain in full force and effect as previously adopted.