

PROPOSED

ORDINANCE NO. 2021-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO CRIMINAL HISTORY SCREENING PRACTICES FOR VENDORS SEEKING CONTRACTS WITH BROWARD COUNTY; AMENDING SECTION 26-125 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); GENERALLY PROHIBITING VENDORS FROM REQUESTING THAT EMPLOYMENT APPLICANTS DISCLOSE CRIMINAL HISTORY BEFORE BEING INTERVIEWED FOR A POSITION; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Commissioner Dale V.C. Holness, and
Cosponsored by Mayor Steve Geller, Vice-Mayor Michael Udine,
Senator Nan H. Rich, and Commissioners Mark D. Bogen,
Lamar P. Fisher, Beam Furr, Tim Ryan, and Barbara Sharief)

WHEREAS, the National Employment Law Project estimates that 70 million American adults have arrests or convictions in their past that can adversely impact their ability to obtain employment;

WHEREAS, successful reintegration into the community by individuals with criminal records contributes to reduced recidivism, strengthens families, and leads to safer communities;

WHEREAS, research studies have found that securing stable employment significantly aids individuals with criminal records in achieving successful reintegration into their communities;

WHEREAS, communities all around the nation are grappling with the reality that minorities, particularly Blacks and Hispanics, are more likely to be arrested and given longer sentences than Whites for the same nonviolent crimes;

1 WHEREAS, according to the Equal Employment Opportunity Commission, many
2 arrests do not lead to criminal charges, nor are they proof that any criminal activity has
3 occurred;

4 WHEREAS, questions regarding criminal history on an employment application
5 can create a chilling effect that discourages individuals with criminal records from applying
6 for positions for which they may be qualified and for which their criminal history may have
7 no relevance;

8 WHEREAS, the Fair Chance Act has been passed into law by the
9 federal government and prohibits federal contractors from asking persons applying to
10 work in connection with federal contracts about their criminal history until after a
11 conditional job offer has been extended to the applicant; and

12 WHEREAS, all people should have a fair chance to compete for employment
13 opportunities,

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15 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
16 BROWARD COUNTY, FLORIDA:

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18 Section 1. Section 26-125 of the Broward County Code of Ordinances is hereby
19 amended to read as follows:

20 **Sec. 26-125. Criminal history screening practices.**

21 (a) *Definitions.*

22 (1) *Applicant* means a person who applies for employment with Broward County.

23 (2) *Broward County* means the government of Broward County, and its departments,
24 divisions, and offices.

1 ~~(3)~~ *Criminal history* means any information related to (a) an arrest or criminal charges
2 against the applicant, (b) proceedings related to the applicant's arrest or criminal charges,
3 ~~and or~~ (c) disposition of the applicant's arrest or criminal charges.

4 ~~(4)~~ *Criminal history background check* means requesting, with a goal of obtaining,
5 information about an applicant's criminal history from third party sources.

6 ~~(5)~~ *Finalist* means an applicant who has been preliminarily determined by Broward
7 County to meet the qualifications for the position and has interviewed for the position.

8 ~~(6)~~ *Initial application for employment* means any document, whether in paper or
9 electronic form, that Broward County requires an applicant to submit to express the
10 applicant's interest in County employment.

11 ~~(7)~~ *Position* means the particular job with Broward County sought by the applicant.

12 Vendor means an actual supplier or potential supplier of goods or services to
13 Broward County.

14 . . .

15 (d) Vendors.

16 (1) As part of the competitive solicitation process, a vendor seeking a contract
17 with Broward County, in the amount of \$100,000 or more, shall certify that
18 it has implemented, or will implement upon award of the contract, policies,
19 practices, and procedures regarding inquiry into the criminal history of an
20 applicant for employment, including a criminal history background check of
21 any such person, that preclude inquiry into an applicant's criminal history
22 until the applicant is selected as a finalist and interviewed for the position.
23 The certification must be in writing and signed by an authorized officer of
24 the vendor. Failure to provide such certification shall result in a vendor

1 being deemed not responsive in accordance with Section 21.40 of the
2 Broward County Administrative Code.

3 (2) Exceptions. The requirements under Section 26-125(d) are not applicable
4 if:

5 a. A criminal history background check is required by state or federal
6 law;

7 b. The applicable contract is not a competitive solicitation or is exempt
8 from Chapter 21 of the Broward County Administrative Code;

9 c. The vendor is a governmental agency; or

10 d. The Broward County Board of County Commissioners determines
11 that it is in the best interests of Broward County to waive the
12 requirements of Section 26-125(d) for the applicable contract or
13 vendor.

14 (3) Contracts. Every contract between a vendor and Broward County for goods
15 or services in the amount of \$100,000 or more shall obligate the vendor to
16 comply with the applicable provisions of this section for the duration of the
17 contract. Each such contract shall include provisions in substantially the
18 following form and content:

19 a. The vendor certifies and represents that it will comply with
20 Section 26-125(d) during the entire term of the contract; and

21 b. The failure of the vendor to comply with Section 26-125(d) at any
22 time during the contract term shall constitute a material breach of the
23 contract, entitling Broward County to pursue any remedy permitted
24

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in underscored type are additions.

1 under the contract and any other remedy provided under applicable
2 law.

3 If the vendor fails to comply with Section 26-125(d) at any time during the
4 contract term, in addition to all other remedies available to Broward County,
5 Broward County may terminate the contract and the vendor may be subject
6 to debarment or suspension proceedings consistent with the procedures in
7 Chapter 21 of the Broward County Administrative Code.

8 ~~(d)~~ (e) *Implementation.* The County Administrator, or designee, shall have ninety
9 (90) days after the effective date of ~~this Ordinance~~ any amendment to Section 26-125 to
10 develop and implement any policies necessary to ensure full compliance with this section.

11
12 Section 2. Severability.

13 If any portion of this Ordinance is determined by any court to be invalid, the invalid
14 portion will be stricken, and such striking will not affect the validity of the remainder of this
15 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
16 legally applied to any individual, group, entity, property, or circumstance, such
17 determination will not affect the applicability of this Ordinance to any other individual,
18 group, entity, property, or circumstance.

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20 Section 3. Inclusion in the Broward County Code of Ordinances.

21 It is the intention of the Board of County Commissioners that the provisions of this
22 Ordinance become part of the Broward County Code of Ordinances as of the effective
23 date. The sections of this Ordinance may be renumbered or relettered and the word
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"ordinance" may be changed to "section," "article," or such other appropriate word or phrase to the extent necessary in order to accomplish such intention.

Section 4. Effective Date.

This Ordinance is effective as of the date provided by law. The amendments to this Ordinance shall apply prospectively only and shall not apply to solicitations advertised by Broward County prior to the effective date of this Ordinance.

ENACTED

PROPOSED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By /s/ Adam M. Katzman 02/10/2021
Adam M. Katzman (date)
Senior Assistant County Attorney

By /s/ René D. Harrod 02/10/2021
René D. Harrod (date)
Deputy County Attorney

AMK/jl
Ban the Box Vendors Ordinance
02/10/2021
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