



September 26, 2016

Mayor Eric Garcetti and Los Angeles City Council
City of Los Angeles
200 N. Spring St.
Los Angeles, CA 90012

RE: Proposed ordinance limiting employers' consideration of criminal history information

Dear Mayor Garcetti and City Council Members,

On behalf of the National Association of Professional Background Screeners (NABPS), whose more than 750 members include Los Angeles residents and businesses, we write to submit written testimony in response to the continued discussion of "ban the box" legislation. As a nonprofit organization consisting of small and large background companies engaged in the background screening profession, NAPBS has been dedicated to providing the public with safe places to live and work since 2003. NAPBS member companies range from Fortune 100 companies to small, local businesses, and conduct millions of employment-related background checks each year. Its members help employers, staffing agencies and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors and volunteers. The proposed rule amendments as drafted pose severe compliance challenges for employers operating within the city.

First, we commend the Los Angeles City Council on its efforts to seek and pass legislation that will help re-integrate individuals back into society. Providing gainful employment is certainly a great way to help reduce recidivism. Over the past several years, we've seen many efforts to tackle this issue through items such as expungement legislation and legislation that creates a "Certificate of Good Conduct" system that provides employers with some level of protection from negligent hiring lawsuits.

NAPBS believes that ban the box legislation in its purest form supports reintegration into the workforce as it is intended to do. We have seen in other jurisdictions where ban the box legislation goes beyond banning the box and has components which overlap with existing law, regulations and guidance. We believe the proposed ordinance in Los Angeles presents the same logistical impossibilities for compliance as those other laws have which ultimately detracts from the intended benefits.

In particular, the draft ordinance requires employers to undergo a written assessment prior to taking adverse action that links the applicant's criminal history with risks inherent in the duties of the position sought. This includes considering the factors identified by the EEOC. Further, the draft ordinance mandates that employers engage in a Fair Chance Process. This entails providing the written assessment and "any other information or documentation supporting the Employer's proposed Adverse Action" to the applicant prior to taking any adverse action. The employer must then wait 5 business days for the applicant to respond. If the applicant provides any further information or documentation, the employer must conduct a written reassessment before taking a final adverse action.

For employers that conduct background screening via Consumer Reporting Agencies (CRAs), the Fair Credit Reporting Act (FCRA) requires a specific adverse action process to be followed any time an



employer is potentially making an adverse decision (i.e., denying employment, terminating an employee, deciding not to promote an individual) based in whole or in part on information contained within a background report – which may or may not contain criminal history information.

By requiring employers to conduct and provide a written assessment based on numerous factors, the proposed ordinance extends beyond the federal requirements which presents potential compliance challenges for employers that hire in multiple jurisdictions. Thus, we would strongly recommend either: 1) removing this provision or 2) requiring this step only for employers that are not currently regulated by the Fair Credit Reporting Act and its adverse action requirements.

We hope that the Committee will take these points into consideration and alter the proposed ordinance as necessary. NAPBS and its members are prepared to discuss any questions you may have and looks forward to working with you to improve this legislation as it moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Sorenson", is positioned below the word "Sincerely,".

Melissa Sorenson, Executive Director
National Association of Professional
Background Screeners