

BAN-THE-BOX REQUIREMENTS

INTRODUCTION

On September 6, 2016, the City of Sacramento enacted an ordinance regarding criminal conviction information in the employment application process (the “Ban-the-Box Ordinance”), which added Chapter 3.62 to the Sacramento City Code and amended Section 2.40.050 of the Sacramento City Code. The Ban-the-Box Ordinance prohibits “covered employers” from asking an applicant for employment to disclose, orally or in writing, information concerning the criminal conviction history of the applicant, including any inquiry about criminal conviction history on any employment application, until the employer has determined the applicant meets the minimum employment qualifications stated in any notice issued for the position.

APPLICATION

“City Contract”

The Ban-the-Box Ordinance applies to all “city contracts.” The term “city contract” means a contract awarded after January 1, 2017 to a “covered employer” for services or a public project in return for compensation of \$250,000 or more. The term “city contract” includes contracts for services or public projects that were awarded for an amount less than \$250,000, but were amended to increase the total compensation to \$250,000 or more. The Ban-the-Box Ordinance also applies when the aggregate value of all contracts for services or public projects the City has awarded to the same “covered employer” within the previous 12 months is \$250,000 or more.

The Ban-the-Box Ordinance does not apply to: (1) contracts awarded by the City Manager in response to an emergency; and (2) contracts for the purchase or lease of equipment, supplies, or other personal property, even if they include incidental services such as delivery, installation, or maintenance.

“Covered Employer”

The Ban-the-Box Ordinance only applies to “covered employers.” The term “covered employer” means a person who is a party to a “city contract” and has at least 20 employees working either full or part time. The number of employees that a contractor has is determined by adding the contractor’s employees and the employees of any “related person.” A person is a “related person” when any of the following circumstances exists:

- (1) The person and the person that is a party to a “city contract” are both corporations and:
 - (a) Share a majority of members of their governing boards; or
 - (b) Have two or more officers in common; or
 - (c) Are controlled by the same majority shareholder or shareholders (control means more than 50% of the corporation’s voting power); or
 - (d) Are in a parent-subsidiary relationship (such a relationship exists when one corporation directly or indirectly owns shares possessing more than 50% of another corporation’s voting power).

- (2) The person otherwise controls and directs, or is controlled and directed by, the person that is a party to a city contract, as determined by the City Manager, or City Manager designee.

The term “covered employer” includes a subcontractor providing services under a “city contract” if the subcontractor has at least 20 employees, whether full- or part-time, or the amount of the subcontract is at least 25% of the amount of the “city contract.”

The term “covered employer” does not include any unit of federal, state or local government.

Exceptions

The Ban-the-Box Ordinance provisions do not apply to: (1) a position for which a “covered employer” is otherwise required by law to conduct a criminal conviction history background check; or (2) a position that will not involve work pursuant to a “city contract.” Additionally, the Ban-the-Box Ordinance does not prevent a “covered employer” from conducting a criminal conviction history background check in subsequent stages of the application process after initially determining whether the applicant meets the minimum employment qualifications.

COMPLIANCE

It is the contractor’s responsibility to determine whether the aggregate value of \$250,000 or more has been met, and to notify the City in writing whenever this is the case. It is also the contractor’s responsibility to ensure that all of its subcontractors who are covered by the Ban-the-Box Ordinance comply with the provisions of the Ban-the-Box Ordinance by including these requirements in all subcontracts covered by the Ban-the-Box Ordinance.

VIOLATIONS AND MONITORING

The Ban-the-Box Ordinance provides that any violation of the Ban-the-Box Ordinance by a “covered employer” constitutes a material breach of the contract, and authorizes the City to terminate the contract. The City may also enforce the Ban-the-Box Ordinance by investigating any alleged violation (but any failure of the City to investigate does not create a right of action against the City). The City may further require “covered employers” to verify compliance.

ADDITIONAL INFORMATION

For a complete description of the Ban-the-Box Ordinance provisions related to City contracts, refer to the Ban-the-Box Ordinance, codified at Sacramento City Code Chapter 3.62. The Sacramento City Code is available on the internet at www.cityofsacramento.org.

For more information on the City’s Ban-the-Box Ordinance, contact Procurement Services at 916-808-6240 or email Purchasing@cityofsacramento.org.