



City of Boston, Massachusetts
Office of the Mayor
Michelle Wu

July 12, 2022

TO THE CITY COUNCIL

Dear Councilors,

I hereby transmit for your approval an amendment to the City of Boston Code, Ordinances, Chapter XV, Section X. This proposed amendment to the ordinance is submitted along with my disapproval of a similar ordinance passed by your Honorable Body on June 29, 2022. I am supportive of the spirit and the majority of the technical components included in the version of the legislation already passed by your body and its intent to promote diversity and equity in hiring and promotional opportunities for our City's workforce. As we seek to address the many issues facing Boston, it is imperative that our workforce represent the diversity of our residents while making sure opportunities to work for the city are welcoming and attainable. It is also important that we retain talent and provide promotional opportunities and pathways for growth for all of our employees, with a focus on those who have traditionally been excluded. It is for this reason that I ask the Council to adopt the new, amended language submitted here.

I disapproved the version that previously passed because I was advised that the inclusion of certain aspects of that version may inadvertently create operational delays in hiring throughout all of our line departments and agencies. Additionally, certain aspects may have made it difficult to determine qualified applicants for specific roles. As the city recovers from the COVID-19 pandemic, it is vital that our workforce is properly staffed to manage the challenges of today.

Therefore, I am submitting to you this new draft based on Docket #0259 but with some technical revisions, which include a change to the title of the position to promote clarity vis-a-vis the existing Chief of Equity and Inclusion, language clarifying that any complaint procedure cannot seek to replace employee rights granted by other laws, a technical clarification of which employees are subject to City diversity and anti-nepotism procedures, and the removal of a blanket requirement of anonymous hiring in order to allow that to become a tool to be implemented in departmental diversity plans but with the flexibility to avoid delays or difficulties of determining necessary qualifications in some instances. These changes will support our goals of increasing the diversity of our city workforce and providing the programs and services our residents have come to expect.

In closing, I urge your Honorable Body to pass this amended Ordinance so the City of Boston can bring talent into our workforce and showcase all that the city has to offer as an employer.

Sincerely,

Michelle Wu
Mayor of Boston

CITY OF BOSTON
IN CITY COUNCIL

An Ordinance Amending City of Boston Code, Ordinances, Chapter XV, Section X and Establishing the Boston Fair Chance Act

Be it ordained by the City Council of Boston as follows:

SECTION 1.

a) Section 15-10 *Creating the Position of Municipal Affirmative Action Officer* shall be retitled “The Boston Fair Chance Act”

b) Section 15-10.1 *Declaration of Policy* shall be amended by adding the following paragraph at the end thereof:

The purpose of this ordinance is to also eliminate conflicts of interest and discrimination in the hiring and promotional practices of covered employees and to establish rules and regulations for the hiring, employment, classification, upgrade, compensation, or promotion of covered employees to ensure that they prioritize merit, experience, and job performance.

c) Section 15-10.2 *Definitions*, shall be stricken in its entirety and replaced with the following:

“*Agency*” shall mean any unit of government within the municipal structure of the City of Boston that is responsible for the application, administration and execution and compliance with the provisions of this Ordinance.

“*City*” shall mean the City of Boston.

“*Minority*” shall mean a person who is Black, Hispanic, Asian American, Pacific Islander, Native American or Cape Verdean.

“*Nepotism*” shall refer to conflict of interest as defined in M.G.L. Chapter 268A, and shall also refer to the practice of someone in a position of authority showing favor to an individual or individuals with whom they are in a family relationship, as defined by this section.

“*Family Relationship*” shall refer to a relationship by blood, adoption, marriage, and domestic partnership, and includes parents, grandparents, great-grandparents, grandchildren, great grandchildren, children, uncles, aunts, nephews, nieces, first cousins, siblings and the spouses of domestic partners of each of these relatives. This definition includes any relationship that exists by virtue of marriage or domestic partnership, such as in-law and step relationships.

“*Covered Employee*” shall refer to any employee employed directly by the City of Boston, including

contract employee employed pursuant to an employment agreement between the City and the employee. Collective bargaining and civil service procedures that conflict with provisions of this ordinance supersede those provisions of this ordinance.

d) Section 15-10.3 *Creation of Position of Municipal Affirmative Action Officer; Duties* shall be stricken in its entirety and replaced with the following:

Section 15-10.3 *Creation of Position of a Director of Diversity*

- A. There is hereby established within the Office of Human Resources, or any successor office, a position to be known as Director of Diversity; said position to be filled by appointment by the Mayor for a term expiring on the first Monday of January following the next biennial election at which the mayor is elected who shall have the powers and perform the duties imposed by law. The Mayor shall appoint the Director of Diversity within one hundred twenty (120) days of passage of this section.
- B. The Director of Diversity shall have oversight of the City's policy of nondiscrimination, equal opportunity, and affirmative action.

e) Section 15-10.4 *Duties of the Municipal Affirmative Action Officer* shall be stricken in its entirety and replaced with the following:

Section 15-10.4 *Duties of the Director of Diversity*

The Director of Diversity shall:

- A. Work with all city Cabinets to designate a new or identify an existing internal Diversity Officer who shall be tasked with the creation of a Diversity Plan.
- B. Work with all city agencies' Diversity Officer in the creation of their Diversity Plan, including but not limited to: a detailed plan for the hiring of minority employees, women employees, LGBTQ+ employees, and employees with disabilities; a detailed plan for the promotion of said employees; preventing harassment, intimidation, and bullying; a detailed plan for disseminating this information to covered employees. Such a plan will be made available to the public via an online dashboard and the Office of the City Clerk.
- C. Give final approval or disapproval of all Diversity Plans prepared by such Agency's Diversity Officer.
- D. Conduct a yearly audit or review of Diversity Plans and their implementation to ensure that they comply with such plans and the intent of this section.
- E. Establish a uniform complaint procedure which shall be available to any covered employee subject to this section to determine any and all issues arising from this section and related to Diversity Plans, including protections against retaliation. This shall also apply to prospective employees and employees who have received a conditional offer of employment but have yet to begin their work. It is recognized that the uniform complaint procedure established by the Director of Diversity cannot substitute for any employee's rights under Massachusetts or federal anti-discrimination laws, therefore any complaint procedure established by the should focus on supporting the effective operation and implementation of Diversity Plans by the City, while not replace any individual employee's existing rights under state and federal law, including the rights to bring matters to the MCAD, to the Civil Service Commission, or to any process established by a collective bargaining agreement.
- F. Take appropriate steps to build public awareness of the Director of Diversity, in addition to awareness amongst covered employees, and of all procedures established by the office for

receiving complaints. The CDO shall provide information to covered employees about the identification of nepotism, workplace discrimination, hiring and promotional discrimination, harassment, intimidation, and bullying.

- G. Ensure that all covered employees are provided with a fact sheet about this ordinance and any other relevant workplace discrimination/anti-nepotism policies and ordinances, including contact information for the Human Rights Commission, the Office of Human Resources, the Mayor's Office of Women's Advancement, the Mayor's Office of Immigrant Advancement, the Disability Commission, the Massachusetts Commission Against Discrimination, the Office of Veterans Services, and other departments as needed. This fact sheet shall be posted in a conspicuous location visible to all employees.
- H. Report from time to time, but at least every six (6) months, to the Mayor and the City Council on the progress being made by the Agencies in administering their Diversity Plans. The Director of Diversity shall submit an annual report to the Mayor and City Council with details and figures documenting Agency progress made towards realizing this section's goals. The report shall include an identification of problems and specific recommendations for increasing the City's performance, in consultation with the City's HR, payroll, benefits, and departments to ensure success in meeting the City's affirmative action goals. The Director of Diversity shall submit the reports to the Clerk and the Clerk shall docket the report and include the docket on the agenda of the next-occurring meeting of the Boston City Council.
- I. Ensure that the City's personnel system is operated in ways which provide assistance to agencies in meeting the goals set in the Diversity Equity Inclusion Plans.

f) Section 15-10.5 *Additional Duties for the MAAO; Requirements of the WMBE Procurement Plan* shall be stricken in its entirety and replaced with the following new sections 15-10.5 and 15-10.6:

Section 15-10.5 Employment and Recruitment Practices for Prospective Covered Employees

In regards to recruitment and employment practices for prospective covered employees, the Director of Diversity shall:

- A. Ensure that any individual who receives a conditional offer of employment with the City of Boston discloses all family relationships to or with other covered employees or officials.
- B. Ensure that any employee engaged in the hiring process or holding decision making authority for their Agency receiving an application from a family member, discloses that relationship to their immediate supervisor and recuses themselves from the hiring process.
- C. Ensure that no public officials or covered employee supervises, evaluates, or directly manages any other covered employees with whom they have a family relationship.
- D. Create alternate arrangements for instances where a family relationship arises so that no official or employee performs supervision and/or influences in any manner the terms and conditions of employment of a relative.

Section 15-10.6 Promotional Practices for Covered Employees:

In regards to promotional practices for covered employees, the Director of Diversity shall:

- A. Establish criteria for a fair, and transparent procedure regarding promotions, upgrading, and reclassification of any covered employee.

