



City of Boston, Massachusetts
Office of the Mayor
Michelle Wu

July 11, 2022

TO THE CITY COUNCIL

Dear Councilors,

I return herewith, undersigned and disapproved, Docket #0259, An Ordinance Amending City of Boston Code, Ordinances, Chapter XV, Section X and Establishing the Boston Fair Chance Act, passed by your Honorable Body on June 29, 2022. As my Administration testified at the hearing and working sessions, I am supportive of the spirit of this legislation 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 am asking the Council to accept my veto and adopt new language that will allow the ordinance to fulfill its original intent.

I have been advised that the inclusion of certain aspects of the ordinance as passed may inadvertently create operational delays in hiring throughout all of our line departments and agencies. Additionally, certain aspects of this ordinance may make 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 recommending that the Council pass a new draft based on Docket #0259 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 Body to not only accept my veto, but to work with my Administration to bring talent into our workforce and to showcase all that the city has to offer as an employer. As you know, being a

public servant is a great honor and I am eager to bring more talent into our workplace. I remain hopeful that we can work together to address this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michelle Wu', with a stylized flourish at the end.

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

- WHEREAS,** In 2020, the Center for American Progress found that, in the public sector, Black household wealth is 37% that of white households; *and*
- WHEREAS,** Since 2016, the City of Boston has released a demographics dashboard detailing the racial and gender makeup of city employees, as well as their average pay; *and*
- WHEREAS,** According to the demographics dashboard, as of January 2022, while white employees made up 48.9% of the total workforce, they disproportionately represented 61.6% of employees making over \$80,000/year; *and*
- WHEREAS,** Even in departments with large percentages of employees of color, the top earners are predominantly white, such as in the Department of Public Works, where Black and Brown employees make up nearly half of the total workforce, but only 10% of the top 10 earners; *and*
- WHEREAS,** The promotion gap between male and female employees, as well as between white employees and employees of color, is a major reason for this income inequality; *and*
- WHEREAS,** Many employees who have worked for the City of Boston for decades find themselves training new hires for positions above them, sending a message that they are somehow competent enough to train management but not competent enough to be management; *and*
- WHEREAS,** In 2012, a group of Black police officers sued the city for what they felt was racism in the promotional process within the Boston Police Department because, according to department personnel numbers, of the department's 51 lieutenants, there were only two Black men and one Asian man, according to department personnel numbers; *and*
- WHEREAS,** The City of Boston has also come under scrutiny for instances of nepotism, such as when former City Councilor Chuck Turner called for an official survey of the number of family members working throughout Boston Public Schools; *and*
- WHEREAS,** There are countless talented employees of color in the City of Boston who are willing and able to step up and do the work if encouraged; *and*

WHEREAS, The City of Boston is filled with motivated, intelligent, competent, caring, and experienced employees and the Boston City Council has an obligation to ensure that hirings and promotions are merit-based and equitable; **NOW THEREFORE**

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 the unit of government within the structure of the City of Boston that is responsible for the application, administration and execution of the policy defined in Subsection 15-10.1.

“*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 or by any employer awarded a service contract or service subcontract, subject to collective bargaining procedures.

“*Anonymous Application*” shall refer to a resume or CV with redacted names, addresses, education background, or any other information that may reveal one’s protected class.

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 Chief Diversity Officer*

- A. There is hereby established within the Office of Human Resources, or any successive office, a position to be known as Chief Diversity Officer; 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 who shall have the powers and perform the duties imposed by law. The Mayor shall appoint the CDO within one hundred twenty (120) days of passage of this section.
- B. The Chief Diversity Officer 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 Chief Diversity Officer*

The Chief Diversity Officer 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 Equity Inclusion Plan.
- B. Work with all city agencies' Diversity Officer in the creation of their Diversity Equity Inclusion 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; a detailed plan for improving workplace culture, 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 Equity Inclusion Plans prepared by such agency's Diversity Officer.
- D. Conduct a yearly audit or review of Diversity Equity Inclusion 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 Equity Inclusion 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. Should the complainant not feel satisfied with the actions taken by the Chief Diversity Officer, the complainant may appeal to the Boston Human Rights Commission.
- F. Take appropriate steps to build public awareness of the Chief Diversity Officer, 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 Equity Inclusion Plans. The Chief Diversity Officer 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 Chief Diversity Officer 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 Chief Diversity Officer 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.
- E. *Anonymous Application Process.* The Chief Diversity Officer will work with departments to create an anonymous application process for initial applications that is, applications received before a selection process creates a shortlist of applicants.

Section 15-10.6 Promotional Practices for Covered Employees:

In regards to promotional practices for covered employees, the Chief Diversity Officer shall:

- A. Establish criteria for a fair, and transparent procedure regarding promotions, upgrading, and reclassification of any covered employee.
- B. Provide opportunities upon request for employees to assess and review career paths and other opportunities for advancement within the City.

- C. Ensure that a reasonable amount of time at the discretion of the Chief Diversity Officer is given to all covered employees looking to receive a promotion, upgrade, or reclassification.
- D. Ensure that, should a covered employee be denied for a promotion, the employer shall provide a statement of specific reasons for their denial.

SECTION 2.

Severability.

The provisions of this ordinance are severable, and if any provision, or portion thereof, should be held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such unconstitutionality or invalidity will not affect the remaining provisions, which will remain in full force and effect.

SECTION 3.

Effective Date.

This ordinance shall be effective immediately upon passage.

Filed in City Council: June 29, 2022