June 30, 2016

Councilmember Curren D. Price, Jr.
Los Angeles City Council
City Hall
200 N. Spring Street, Rm 420
Los Angeles, CA 90012

Re: Fair Chance Ordinance BCA Recommendations

Dear Councilmember Price:

Thank you for your leadership of the Fair Chance Ordinance. The Los Angeles Area Chamber of Commerce is supportive of policies that help reduce recidivism, facilitate the reintegration into society of persons with conviction records, and reduce barriers to employment for formerly incarcerated individuals. We have two full-time staff members working on Smart Justice reforms to help dismantle the school-to-prison pipeline, provide in-custody educational and job readiness programs, and encourage employers to adopt open and fair hiring practices. Though we support the underlying purpose of the proposed Fair Chance Ordinance, we would like to offer thoughtful response from the business community on the ordinance and the Bureau of Contract Administration (BCA) recommendations.

First, we strongly recommend the language about conditional offer of employment be expanded to allow employers to explore criminal history during the interview process as well. We suggest the following language:

- Request the City Attorney to prepare and present an ordinance to require City contractors and private employers with 10 or more employees to remove questions relating to criminal history from job applications and require any questions related to criminal history not be made until an interview or a conditional offer of employment has been made.

Of the 11 Ban-the-Box laws currently on the books in the state of California, none of them include the conditional hire provision for private sector employers. We believe those jurisdictions understand that a blanket policy that does not consider the business needs and hiring process of private sector employers could prove burdensome to businesses and might actually prove detrimental to the underlying purpose.

Furthermore, we would like to see the BCA include or modify the following recommendations:

- **Modify Private Right of Action**: The BCA recommends that private right of action be included to provide an additional enforcement option. However, San Francisco, Seattle, and Washington, D.C. - cities the BCA reviewed for its recommendations - do not include private right of action. The Chamber is concerned about the costs associated with frivolous lawsuits that could disproportionately harm small businesses, when the penalties enacted from this law should be sufficient enforcement.

- **Modify Records Retention Period**: The BCA recommends a record retention requirement of three (3) years. However, California state law requires employers retain employment records such as job applications, resumes, employment inquiries, and job opening announcements for two (2) years. We recommend that the LA Fair Chance Ordinance align
with state law (two year retention requirement) to ensure continuity of business operations for employers throughout the state.

- **Modify the Fair Chance Process for Adverse Action:** BCA includes a recommendation that the employer be required “to provide applicant/employee with a copy of the individual assessment.” However, San Francisco, Seattle and Washington, D.C. laws do not require this of employers. Such a requirement can be burdensome for employers of all sizes, even when they are already doing their own internal assessments. We suggest the following language from San Francisco’s Fair Chance Ordinance:

  “Before taking adverse action such as failing/refusing to hire, discharging, or not promoting an individual based on a conviction history or unresolved arrest, give the individual an opportunity to present evidence that the information is inaccurate, the individual has been rehabilitated, or other mitigating factors.”

- **Include Stakeholder Engagement of the Business Community:** The BCA provides no recommendations for how the City will engage the business community to get a balance of perspectives on rules, guidelines and recommendations for implementation. This type of outreach was conducted in Seattle, San Francisco, and Washington, D.C.

- **Include Training and Educational Outreach to the Business Community:** The BCA recommends contractors for outreach to business community. However, Seattle, San Francisco and Washington, D.C. all employ city staff to act as business liaisons/trainers and have prioritized easy access to resources and training for the business community. Furthermore, the BCA provides no recommendations on conducting outreach and proactively informing the business community of how to comply with the law.

- **Include Grace Period for Implementation:** The BCA makes no recommendations for a grace period that would allow the City to conduct appropriate outreach and training for businesses and allow business to update hiring policies and train employees before enforcing penalties.

As the Chair of the Economic Development Committee, we thank you for your thoughtful deliberation on this issue and hope we can work together to develop a policy that balances social and economic impacts.

Sincerely,

Gary Toebben  
President & CEO  
Los Angeles Area Chamber of Commerce

David Rattray  
EVP, Education & Workforce Development  
Los Angeles Area Chamber of Commerce