



## **Administrative Regulations**

### **Office of the Mayor**

**Title:** BACKGROUND INVESTIGATIONS

**A.R. Number:** 4.14 **Effective Date:** March 26, 2021 **Page 1 of 7**

**Supersedes:** Background Investigations **A.R:** 4.14 **DATED:** February 1, 2007

#### **I. PURPOSE**

The purpose of this policy is to ensure that applicants seeking employment with the City of Richmond (City) do not pose a threat to themselves, other employees, or the public. Therefore, this policy sets forth guidelines for conducting background investigations on candidates for employment.

This policy is not intended to replace or control background investigation procedures already in effect for departments which have background check requirements that exceed the requirements of this policy or that may otherwise be required by law.

#### **II. POLICY**

It is the policy of the City to comply with all State and Federal laws and provide specific guidelines relating to background investigations including, but not limited to:

1. Employment verifications, professional references, licensing and educational verifications, credit history, child abuse and sex offender registry checks, commercial (CDL) and other driver's licenses record verifications, criminal records search, and other pre-employment verifications required by the U.S. Department of Transportation (DOT) for those to be employed in positions under the Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline & Hazardous Material Safety Administration (PHMSA).
2. Criminal conviction records and consumer credit reports shall be considered only as one aspect of the total assessment process except when the position, because of the nature of the work to be performed, must be limited to persons who have no past criminal records or have not been convicted of any related crime.
3. Background credit history reports through a consumer reporting agency, must comply with the Fair Credit Reporting Act (FCRA) of 1996.
4. The City is prohibited from requiring an applicant to disclose information concerning any arrests, criminal charges, or convictions related to now de-criminalized marijuana offenses (simple possession).
5. The City will not ask a question inquiring whether the applicant has ever been charged with, convicted, or arrested of any crime unless the inquiry takes place during or after a staff interview of the prospective employee.

The information in 5 above does not apply for positions related to law enforcement agencies.

Criminal background investigations will not be conducted on youth participants in the Mayor's Youth Academy Programs.



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#### **A. Mandatory Background Investigations**

The following checks shall be required for finalists identified in the selection and placement process for all departments that report to the Chief Administrative Officer and City Council, in addition to other departments that utilize the City's recruitment services:

1. Criminal history record checks.
2. Motor and/or CDL vehicle checks for those driving a City vehicle or requiring a CDL.
3. Pre-employment verifications for FMCSA positions for previous DOT covered employment within the last three (3) years with the completion of the *Safety Performance History Records Request* form.
4. Pre-employment inquiries for PHMSA positions to comply with all required DOT substance abuse regulations with completion of the *PHMSA Release of Information Form 49 CFR Part 40 Drug and Alcohol Testing*.

#### **B. Child Protective Registry (CPS) and Sex Offender Registry Checks**

The applicant may be subjected to CPS and the Sex Offender Registry checks when the position involves the performance of duties in the following categories:

1. Access (supervised or unsupervised) to children, the elderly, or disabled persons.
2. Homes for adults, licensed district homes for adults, and licensed adult daycare centers.
3. Residential facilities for juveniles regulated or operated by the Department of Justice Services and/or the Virginia Department of Juvenile Justice Services.

#### **C. Reference Checks and Previous Employment Verifications**

Prior to hire, all City departments should make and document a good-faith effort to conduct professional reference checks and employment verifications.

#### **D. Additional Background Checks**

Each Department/Agency has the discretion to conduct additional background investigations that are deemed job-related or required by law. All departments will be responsible for the individual costs of the background check report(s).



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**III. PROCEDURE**

All employment offer letters shall include the notation that the offer is contingent upon the successful completion of those necessary pre-employment checks as it relates to the specific position. The criminal records check and other required checks should occur once the selected applicant has accepted the contingent offer for the position.

The Department of Human Resources shall receive all background investigation reports. It is the Department of Human Resources' duty to determine the eligibility for hire based on all the information obtained in the application and pre-employment process. The assigned departmental HR representative will be notified of the employment eligibility determination.

**A. Criminal Background Check**

Each applicant offered contingent employment shall be required to submit to fingerprinting and to execute a completed Release of Information form to be forwarded through the Virginia State Police/Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such applicant. The Release of Information form is available online. An applicant's failure to submit a completed form or complete all information truthfully shall result in the applicant being ineligible for employment.

**B. Credit History Check**

The applicant must complete an Applicant Release and Authorization form when a credit history report is required authorizing the City to obtain a consumer report for employment purposes.

**IV. RESPONSIBILITIES**

**A. Responsibilities of the Department of Human Resources**

1. Ensure the appropriate background investigations are performed when deemed mandatory in accordance with the information selected on the Release of Information form after verifying the applicant's identity from a valid state-issued photo identification.
2. If a record appears on the background results, the HR Director or Designee, will review the information to determine if the background results would adversely affect the applicant's ability to successfully perform the specific responsibilities of the position. In determining whether or not an individual's background information disqualifies the individual from employment with the City, the following factors may be considered:
  - i. Barrier crimes to the extent required by federal or state law;



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- ii. The nature and seriousness of the offending conduct;
- iii. The age of the applicant at the time of the conviction;
- iv. The number of convictions in the applicant's past;
- v. The length of time since the conviction or period of time between the convictions;
- vi. The circumstances of the conviction;
- vii. The extent to which the position applied for might offer an opportunity to engage in further criminal activity of the same type in which the person had been involved;
- viii. The applicant's employment history prior to and since the offending conduct;
- ix. Rehabilitation of the individual;
- x. How the past conduct relates to the particular functions of the job or the ability, capacity or fitness required to perform the duties of the job;
- xi. The degree of public contact in the job;
- xii. How such conduct could affect the integrity of the workplace;
- xiii. Consideration for affiliated job-readiness programs.

If the background results reflect information that may require additional consideration, the candidate will be contacted for a written statement in response to the background information results.

#### **B. Responsibilities of the Assigned Departmental HR Representative**

1. Upon the candidate's acceptance of the contingent offer, the assigned departmental HR representative shall complete the *For Office Use Only* section of the Release of Information form and any additional required background checks form(s) to provide to the candidate and notify the individual how to schedule the fingerprinting with the Department of Human Resources.
  - a. A new background check is not needed for a current employee being promoted or transferred within 60 days of completing a background check, unless the previous check did not include inquiries or checks required for the new position.
2. Upon receipt of the employment eligibility determination, the assigned departmental HR representative shall communicate the eligibility for employment to the applicant. If the applicant is ineligible for employment, the contingent offer shall be rescinded and the process to challenge the decision shall be provided.

#### **C. Responsibilities of Applicant**

1. Upon the acceptance of the contingent offer, the applicant should truthfully complete all background check forms in entirety, follow the instructions included on the forms or provided by the department, and provide a valid state-issued photo identification at the fingerprint appointment.



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2. If additional information is requested to make a final determination, within five (5) business days, provide any written information needed for the background investigation. Failure to provide an acceptable response, will rescind the offer.

#### **D. Responsibilities of Current Employees**

1. Truthfully complete the Release of Information Request form and any additional required form provided by the assigned departmental HR representative in its entirety.
2. Employees are required to notify the supervisor of any arrest, pending charges, or convictions (including pleas of guilty or nolo contendere) no later than seven (7) calendar days after the occurrence. After such notification, the Appointing Authority will notify the assigned departmental HR representative who will consult with the HR Director or Designee on a case-by-case basis.

#### **E. Responsibilities of Temporary Employment Agencies**

The Temporary Employment Agency shall obtain the background records from the Virginia State Police Central Criminal Records Exchange and will be responsible for the individual costs of the background check report(s) for applicants placed to work at the City. Temporary Employment Agencies are required to complete all required background checks for that particular position after the applicant accepted the contingent offer and should notify the assigned departmental HR representative of the results prior to determining the applicant's employment start date.

If a record appears on the background results, the report(s) should be provided to the assigned departmental HR representative immediately. The final determination of assignment eligibility will be determined by HR Director or Designee, and, as appropriate, may also be reviewed by the Appointing Authority based on the factors outlined in Section IV. *Responsibilities A. Responsibilities of Department of Human Resources* of this policy.

#### **V. DISQUALIFICATION OF EMPLOYMENT**

When the determination is made that an applicant's background information disqualifies the individual from employment with the City, the following shall occur:

1. The assigned departmental HR representative will be notified after the HR Director or Designee has made the ineligibility status of employment.
2. The HR Director or Designee will review any challenges received.
3. If requested, the applicant will be presented with a copy of the background check report.
4. The Applicant may challenge any incorrect or misleading information found as a result of the background investigation by the following means:



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- a. Request from the State Police in writing any disqualifying information found in a background investigation report.
- b. Within five (5) days of the notice of ineligibility, the applicant may request a challenge consisting of any of the following:
  - i. Request via email a copy of any background check report to challenge the accuracy and completeness of any information contained in any such report;
  - ii. Submit a correction of errors from the Virginia State Police;
  - iii. Provide a letter of explanation with appropriate documentation, if applicable;
  - iv. Request a meeting to explain the information to the HR Director or Designee.

## **VI. RETENTION OF RECORDS**

All background investigation information shall be maintained in accordance to applicable retention laws and with the strictest level of confidentiality. The assigned departmental HR representative and management will not be provided with copies of the background investigation unless needed to support a grievance or legal action.

## **VII. DEFINITIONS**

The following words and terms, when used in conjunction with the City's Background Investigation policy, shall have the indicated meanings:

**Applicants** – Individuals applying for employment directly with the City, through a temporary employment agency or through the job-readiness program with the Office of Community Wealth Building. Volunteers, unpaid interns, and current employees who apply to a position resulting in a lateral transfer or promotion are also considered as applicants for the purpose of this policy.

**Barrier Crimes** - Pursuant to the Code of Virginia pertaining to the specific occupation.

**Child Care Services** - Child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services. (42 U.S.C. §13041 (a) (2))

**Consumer Reporting Agency** - Any person or entity, which for fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. (15 U.S.C. §1681 a (f))



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**VIII. AUTHORITY**

15 U.S.C. §1681 a (f)  
42 U.S.C. §13041 (a) (2)  
49 CFR 391.23, 391.51, 391.53  
49 CFR 390.15(b) (1) (2)  
49 CFR 390.5  
49 CFR 382.701(a)  
49 CFR 386.12  
*Code of Virginia* §15.2-1503.1  
*Code of Virginia* §15.2-1501.1  
*Code of Virginia* §19.2 – 389  
*Code of Virginia* §2.2-2812.1  
*Code of Virginia* §152-1503.3  
*City of Richmond* - Ordinance No. 2013-45-50


**IX. REGULATION UPDATE**

The Department of Human Resources shall be responsible for modification to this Policy.

**RECOMMEND APPROVAL:**

 3-26-21  
\_\_\_\_\_  
CHIEF ADMINISTRATIVE OFFICER/DESIGNEE

**APPROVED:**

 3/30/21  
\_\_\_\_\_  
MAYOR