

## **Personnel Rule 10.3 – Criminal Background Checks**

### **10.3.0 Authority**

SMC 4.04.040, and subsequent revisions thereto, Administration

SMC 4.04.050, and subsequent revisions thereto, Rule-making Authority

RCW 9.94A, and subsequent revisions thereto, Sentencing Reform Act

RCW 43.43.830, and subsequent revisions thereto, Background Checks -- Access to children or vulnerable persons

RCW 43.43.832, and subsequent revisions thereto, Background Checks -- Disclosure of information

RCW 74.34.021, and subsequent revisions thereto, Vulnerable Adult --Definition

15 U.S.C. §§ 1681-1681u, and subsequent revisions thereto, Fair Credit Reporting Act

RCW 19.182.020, and subsequent revisions thereto, Washington's Fair Credit Reporting Act

WAC 162-12-140, and subsequent revisions thereto, Washington Human Rights Commission, Pre-employment Inquiries

WAC 388-06-0110, and subsequent revisions thereto, Background Checks

### **10.3.1 Definitions**

- A. "Appointing authority" shall mean the head of an employing unit authorized by ordinance or City Charter to employ others on behalf of the City, or a designated management representative. The term includes and can be used interchangeably with department head, department director, superintendent, or chief.
- B. "Criminal Background Check" shall generally mean an investigation into a person's conviction history to determine whether, in the last ten years, the person had been convicted of a felony, unless federal state or local law require a different definition for specific types of jobs. A "Criminal Background Check" may require fingerprinting and/or record checks of criminal convictions; it does not include consideration of arrest records that did not result in convictions.
- C. "Confidential file" refers to the confidential portion of an employee's personnel file as defined in PR 10.1.1.(b).

- D. "Conviction" shall mean an adjudication of guilt that includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.
- E. "Employing unit" shall mean any department of the City and, within the Executive and Legislative Departments, any office created by ordinance.
- F. "External applicant" shall mean an applicant for employment with the City who is not a regularly appointed employee.
- G. "Vulnerable adults" shall mean adults of any age who lack the functional, mental, or physical ability to care for themselves. It shall also include any person who fits within the definition of "vulnerable adult" as that term is defined in RCW 74.34.

### **10.3.2 Application of this Rule**

- A. The provisions of this Rule apply to external applicants for City non-public safety positions and assignments, including temporary, work study and intern assignments.
- B. Appointing authorities may establish written policies and procedures for the implementation of this Rule to facilitate the management of the personnel system within their employing units, provided that such policies and procedures do not conflict with the provisions of this Rule.

### **10.3.3 Criminal Background Check Policy**

- A. It is the City's policy that the use of applicant criminal conviction information will be based on consideration of the relationship between past felony convictions and the potential risk to the City and its employees, residents and customers. The City will also comply with any federal or state law or regulation pertaining to background checks.
- B. Offers of employment for City positions that fall under the following categories shall be conditioned upon a criminal background check as mandated by state and/or federal law. The extent of the background check will be dictated by the applicable state or federal law:
  - 1. Positions with access to the Federal Criminal Justice Information System (CJIS).
  - 2. Positions that process US Passports.
  - 3. Positions at City Light with unsupervised access to electric generating facilities.
  - 4. Positions that require a Special Police Commission.
  - 5. Positions in a licensed day-care facility.

6. Positions that will have unsupervised access to children under the age of sixteen, developmentally disabled persons or vulnerable adults in facilities or operations that are licensed, relicensed or contracted by the State.
- C. Offers of employment for City positions that fall under the following categories may be conditioned upon a criminal background check because of the City's interest in protecting City operations, residents, employees and customers:
1. Senior leadership positions (e.g., the Appointing Authority or senior managers reporting to the Appointing Authority).
  2. Positions that handle significant amounts of cash, typically more than \$500 per week.
  3. Positions with access to confidential identity information which includes a name associated with a social security number, bank account information, credit card information, or other combination of information that could be used for identity theft or related criminal activity.
  4. Positions that may involve unsupervised access to children under the age of sixteen, developmentally disabled persons or vulnerable adults other than in state licensed or contracted facilities or operations.
  5. Positions with unsupervised access to homes of residents, meaning they work alone without direct supervision or they do not work in pairs or teams of employees.
  6. Positions with major fiduciary responsibilities (e.g., employees charged with investing City funds).
  7. Under limited circumstances, positions with broad, unsupervised access to City facilities after hours.
- D. All costs and fees associated with the criminal background check process shall be paid by the employing unit.
- E. Employing units will obtain a criminal background check report only with written permission of the applicant. Records received pursuant to the criminal background check shall be used only as part of the employment process, shall be filed with the employing unit and will be maintained in the employee's confidential personnel file upon hire or in the recruiting file if the candidate is not hired. Employing units shall extend the job offer before the criminal background check is conducted, with the job offer being contingent on the results of the background check report.
- F. Finalists for the position of appointing authority or finalists for positions for confidential employees in the Mayor's Office may be subject to a background check before receiving a conditional job offer.

#### **10.3.4 Consideration of Background Check Results for External Applicants**

- A. No person shall be disqualified from employment with the City solely or in part because of prior felony conviction that occurred within the past ten (10) years – unless the crime or crimes for which convicted directly relates to the position of employment sought.
- B. When applying for positions under Section 10.3.3.B, all applicants are required to successfully complete the criminal background check process, pursuant to federal and state laws. Nothing in this policy is intended to supersede applicable federal and state laws relating to criminal background checks.
- C. When the employing unit receives conviction information it considers to be disqualifying for positions listed under Section 10.3.3.C, it will notify the Employment Services Division of the Personnel Department in writing specifying how the conviction information directly relates to the position of employment. The Employment Services Division will review the requirements of the job, the background check report and any relevant information in determining whether the conviction directly relates to the position of employment sought. The Employment Services Division will submit a confidential recommendation to the Personnel Director.
- D. Before any decision is made not to hire a candidate based on conviction information, the candidate will be notified by the Employment Services Division of the employing unit's proposed action to not offer the position based on the conviction report, given a copy of the report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act". The applicant will have ten (10) working days to respond to the proposed action after receiving written notification of the action.
- E. The Personnel Director will make the final determination as to whether such information disqualifies the external applicant for employment and shall notify the employing unit.
- F. Should the City reject the applicant due, partially or solely, to the finalist's prior conviction of a crime, the Employing Unit's Human Resources Manager shall notify the finalist in writing of 1) the name, address, and phone number of the outside agency that supplied the report and 2) a statement that the outside agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it, 3) a notice of the applicant's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional, free consumer report upon request.

#### **10.3.5 Mandatory Inquiries for Employing Units Providing Services to Children, Developmentally Disabled Persons and Vulnerable Adults**

All Employing Units shall require any applicant whose position will routinely have unsupervised access to children under sixteen years of age, developmentally disabled persons or vulnerable adults to disclose 1) whether the applicant has been convicted of a crime, 2) has had findings against him or her in any civil adjudicative proceeding under

RCW 43.43.830, including findings of domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law. This requirement applies whether or not a background check is completed.