

City of Alexandria, Virginia

MEMORANDUM

**DATE:** JUNE 6, 2012

**TO:** THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

**FROM:** RASHAD M. YOUNG, CITY MANAGER *RM*

**SUBJECT:** AN ORDINANCE TO ADD A NEW SECTION 2-5-6 (CRIMINAL HISTORY RECORDS CHECK OF APPLICANTS RECEIVING A CONDITIONAL OFFER FOR CITY EMPLOYMENT) TO ARTICLE A (GENERAL PROVISIONS) OF CHAPTER 5 (OFFICERS AND EMPLOYEES) OF TITLE 2 (GENERAL GOVERNMENT) OF THE CODE OF THE CITY OF ALEXANDRIA, VIRGINIA, 1981, AS AMENDED.

**ISSUE:** Virginia law requires that a locality must pass an ordinance in order to conduct criminal background checks on applicants upon offer of employment. The proposed ordinance adds Section 2-5-6 of Article A, Chapter 5 of Title 2 to authorize the City to conduct criminal history records checks on all applicants receiving a conditional offer of employment.

**RECOMMENDATION:** The City Council introduce the attached ordinance to add a new Section 2-5-6 allowing for criminal history records checks of all applicants receiving a conditional offer for City employment, pass it on first reading, and schedule it for public hearing, second and final passage on June 16, 2012.

**DISCUSSION:** In order to conduct any criminal background checks on applicants for employment, Virginia law requires that the City must do so pursuant to a duly enacted ordinance. A further explanation of the language of the proposed ordinance is set forth below:

- (a) Virginia law allows for a locality to conduct criminal background checks on applicants for employment when it finds that such checks are necessary “in the interest of public welfare or safety.” Conducting criminal background checks on all applicants following a conditional offer of employment can assist with loss prevention or prevention efforts by offering a safer, more productive work environment and avoid litigation as a result of negligent hiring. Virginia law requires that the criminal history records checks must be conducted following an offer of employment and must be conducted through the Central Criminal Records Exchange and the Federal Bureau of Investigation.
- (b) Virginia law provides that, pursuant to an ordinance, the locality may require applicants upon offer of employment to submit to fingerprinting and to provide

personal descriptive information to be forwarded through the Central Criminal Records Exchange and the Federal Bureau of Investigation. The City does not intend at this time to require applicants to pay for the cost of fingerprinting or a criminal records check. However, Virginia law allows localities to require applicants to pay for such costs, if authorized to do so by ordinance. Including this language in the ordinance allows the City the option to require applicants to pay these costs in the future or under certain circumstances when deemed necessary.

- (c) This section describes the type of information that will be provided through the Central Criminal Records Exchange and the Federal Bureau of Investigation.
- (d) Virginia law requires that upon receipt of an applicant's criminal record, the City's chief administrative officer or his or her designee shall determine whether a criminal conviction directly relates to a position by considering the specific factors set forth in Section (d) of the proposed ordinance.
- (e) Virginia law requires that if an applicant is denied employment because of information appearing in his or her criminal history record, the locality shall notify the applicant of this information.
- (f) Virginia law requires that the information obtained from the criminal history records check shall be confidential and shall not be disseminated except as authorized by Virginia law.

**FISCAL IMPACT:** A Human Resources staff reviewed information provided by City departments and determined that approximately 600 background checks are annually conducted City-wide (this does not include sworn personnel for Public Safety departments, who are already conducting their own background checks). The cost to the City of the criminal history check conducted through the Central Criminal Records Exchange and the Federal Bureau of Investigation would be \$15.00 per applicant, for an approximate yearly cost of \$9,000.00 (this does not include sworn personnel for Public Safety departments).

**ATTACHMENT:** Proposed Ordinance – Criminal History Records Check of Applicants Receiving a Conditional Offer for City Employment

**STAFF:**

Thomas Gates, Acting Director, Human Resources  
Steve J. Mason, Sr., Assistant Director, Human Resources  
Nancy Stephens, HR Manager II, Human Resources  
Heather R. Skeeles-Shiner, Assistant City Attorney

1	Introduction and first reading:	6/13/12
2	Public hearing:	6/16/12
3	Second reading and enactment:	6/16/12

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to add a new Section 2-5-6 (CRIMINAL HISTORY RECORDS CHECK OF APPLICANTS RECEIVING A CONDITIONAL OFFER FOR CITY EMPLOYMENT) to Article A (GENERAL PROVISIONS) of Chapter 5 (OFFICERS AND EMPLOYEES) of Title 2 (GENERAL GOVERNMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

Virginia law requires that a locality must pass an ordinance in order to conduct criminal background checks on applicants upon offer of employment. The proposed ordinance adds Section 2-5-6 of Article A, Chapter 5 of Title 2 to authorize the City to conduct criminal history records checks on all applicants receiving a conditional offer of employment.

Sponsor

None

Staff

Thomas Gates, Acting Director, Human Resources Department  
 Steve J. Mason, Sr., Assistant Director, Human Resources  
 Nancy Stephens, HR Manager II, Human Resources  
 Heather R. Skeeles-Shiner, Assistant City Attorney

Authority

§ 15.2-1503.1, Code of Virginia, as amended  
 § 15.2-1505.1, Code of Virginia, as amended  
 § 19.2-389, Code of Virginia, as amended

Estimated Costs of Implementation

A Human Resources staff reviewed information provided by City departments and determined that approximately 600 background checks are annually conducted City-wide (this does not include sworn personnel for Public Safety departments, who are already conducting their own background checks). The cost to the City of the criminal history check conducted

1 through the Central Criminal Records Exchange and the Federal Bureau of Investigation would  
2 be \$15.00 per applicant, for an approximate yearly cost of \$9,000.00 (this does not include sworn  
3 personnel for Public Safety departments).

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5 Attachments in Addition to Proposed Ordinance

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to add a new Section 2-5-6 (CRIMINAL HISTORY RECORDS CHECK OF APPLICANTS RECEIVING A CONDITIONAL OFFER FOR CITY EMPLOYMENT) to Article A (GENERAL PROVISIONS) of Chapter 5 (OFFICERS AND EMPLOYEES) of Title 2 (GENERAL GOVERNMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article A, Chapter 5, of Title 2 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended, by adding thereto a new section 2-5-6 to read as follows:

[The following is all new language]

Sec. 2-5-6 Criminal history records check of applicants for city employment.

(a) Finding that it is necessary, in the interest of public welfare and safety, that investigations be conducted of all applicants to whom a conditional offer of employment with the city is made to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration, the city manager or his or her designee shall request, pursuant to Code of Virginia sections 19.2-389 and 15.2-1503.1, as amended, from the Virginia Central Criminal Record Exchange and the Federal Bureau of Investigation, a criminal record check of each applicant for city employment.

(b) Each applicant required to undergo a criminal background check, upon receiving a conditional offer of employment, shall submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange and the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. Such applicant may be required to pay the cost of fingerprinting or criminal records check, or both.

(c) Criminal history information considered in accordance with this section shall include outstanding warrants, pending criminal charges, and records of conviction. Records of dispositions which occurred while an applicant was considered a juvenile shall not be referenced unless authorized by court order, federal regulation, or state statute authorizing such dissemination.

(d) The city manager or his or her designee shall review the criminal history record information to determine whether the conviction record, if any, of the applicant is compatible with the nature of the city employment under consideration. In making this determination and in determining whether a criminal conviction directly relates to a position, the city manager or his or her designee shall consider the following criteria: (i) the nature and seriousness of the crime; (ii) the relationship of the crime of the work to be performed in the position applied for; (iii) the extent to which the position applied for might offer an opportunity to engage in further criminal

1 activity of the same type as that in which the person had been involved; (iv) the relationship of  
2 the crime to the ability, capacity or fitness required to perform the duties and discharge the  
3 responsibilities of the position being sought; (v) the extent and nature of the person's past  
4 criminal activity; (vi) the age of the person at the time of the commission of the crime; (vii) the  
5 amount of time that has elapsed since the person's last involvement in the commission of a  
6 crime; (viii) the conduct and work activity of the person prior to and following the criminal  
7 activity; and (ix) evidence of the person's rehabilitation or rehabilitative effort while incarcerated  
8 or following release.

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10 (e) Any applicant who is denied employment on the basis of criminal record information  
11 obtained pursuant to this section will be notified in writing and will be given an opportunity to  
12 inspect the information for the purpose of clarifying, explaining, or denying the information  
13 therein.

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15 (f) The criminal history information provided in accordance with this section shall be  
16 confidential, shall be used solely to assess eligibility for city employment, and shall not be  
17 disseminated except as provided for in this section.

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19 Section 2. That this ordinance shall become effective upon the date and at the time  
20 of its final passage.

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22 WILLIAM D. EUILLE  
23 Mayor  
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25 Introduction: 6/13/2012  
26 First Reading: 6/13/2012  
27 Publication:  
28 Public Hearing: 6/16/2012  
29 Second Reading: 6/16//2012  
30 Final Passage:  
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