

**CITY OF NEW BERN  
ADMINISTRATIVE ORDERS  
OF THE CITY MANAGER**

<b>ADMINISTRATIVE ORDER 2.3</b>
<b>PRE-EMPLOYMENT BACKGROUND INVESTIGATION POLICY</b>
To: All City Employees
From: Mark Stephens, City Manager
Maintained By: Human Resources
Date: April 1, 2019
New Policy

**Purpose**

The City of New Bern desires to establish a uniform policy for conducting background investigations for city positions. Pre-employment background investigations are important to ensure that candidates for employment with the City of New Bern are qualified individuals, and to verify the accuracy of the information provided by the candidate.

**Policy**

Background investigations may be conducted on volunteers, interns, independent contractors, and final internal or external candidate(s) applying for any position with the City of New Bern and must be reasonable and appropriate for the position in which the applicant is applying. The type of information that may be collected as part of a background check includes, but is not limited to: reference checks, social security verification, education verification, criminal conviction record check, and, if applicable, a credit history check, sex offender registry and motor vehicle records check. Background investigations may also be conducted with employee change of position including promotions, demotions (excluding involuntary demotions), and lateral transfers (when into another position title, not when into the exact same position title). Criminal background checks will only be required for positions where a criminal background check is necessary to prevent conduct which might be detrimental to the health, safety, or welfare of the public, or to protect the city from conduct which might be detrimental to the city and its property.

Background investigations must be in compliance with all federal and state statutes such as the Fair Credit Reporting Act (FRCA) and the Municipal Records Retention Schedule. The investigations must be consistent with the guidelines set forth by these laws requiring organizations to obtain a candidate's written authorization before obtaining a criminal background report, motor vehicle records check or credit report, and to properly store and dispose of information derived from such reports.

The results of a criminal background check cannot be used as a basis for denying employment, unless the denial of employment is determined to be due to job-related issues or business necessity. The following factors will be considered for those applicants with a history of criminal convictions in determining whether to hire the applicant:

- (1) The nature of the crime and its relationship to the position;
- (2) The length of time since the conviction;
- (3) The number (if more than one) of convictions;
- (4) The applicant's conduct since the conviction; and
- (5) Whether hiring the applicant would pose a risk to the business.

The applicant will be given an opportunity to review the criminal background check results, correct any inaccuracies, and submit an explanation and any evidence of mitigation or rehabilitation. Arrest history information should **not** be used as a part of the hiring process and **cannot** be a basis for denying employment. Although a disqualification is possible, in accordance with federal and state laws a previous conviction does not automatically disqualify an applicant from consideration for employment with the city unless required by law.

The city will ensure that all information attained from the reference and background investigation process will only be used as part of the employment process and kept strictly confidential according to FCRA. Hiring managers and administrative staff responsible for the pre-employment process are reminded that background check information falls under the FCRA disposal rules. Background check information kept as part of an employment hiring record, or used to make an employment decision, should be kept with the employee's personnel file in the Human Resources Department. All applicant information no longer required for use should be sent to the Human Resources Department for appropriate disposal.

If an applicant is found to have deliberately withheld information with the intent to mislead or is found to have falsified information pertaining to previous convictions, education, employment history, or any information deemed pertinent to employment, the employee will be disqualified from further employment consideration in any position with the city due to falsification of an application. If such information is discovered post-employment, the employee will be terminated.

The North Carolina Department of Justice sets the qualification for the employment and retention of police officers including, but not limited to: standards addressing the minimum age, education, physical standards and mental status, citizenship, and good moral character (*See* N.C. General Statute §17C-10). In addition, Chapter 12 of the North Carolina Administrative Code controls the extent, scope and use of a background investigation and further places specific eligibility limitations on an applicant's prior criminal history. In the event one of the mandatory

state standards conflicts with this policy, then the state standard shall control and shall be followed by the City of New Bern Police Department.

### **Definitions**

1. **Adverse Action:** A denial of employment or volunteer position to a prospective employee, independent contractor, intern, or volunteer.
2. **Background investigation:** A check of various information that verifies the eligibility of prospective employees, volunteers, interns, or independent contractors for city service. The type of information that can be collected includes, but is not limited to: consumer report, credit check, criminal background check, motor vehicle record, educational qualification check, sexual offender registry, social security verification, and verification of personal and/or employment references.
3. **Credit Check:** A review of credit history for the last seven years as reported by a major credit bureau.
4. **Criminal Background Check:** A search of criminal history.
5. **Consumer Report:** Any written, oral, or other communication of any information character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or part for the purpose of serving as a factor in establishing the consumer's eligibility for employment.
6. **Educational Qualification Check:** Verification of submitted education up to and including the request of transcripts, certifications and/or diplomas.
7. **Fair Credit Reporting Act (FCRA):** Federal regulations of the collection and use of information contained in consumer reports prepared and assembled by a consumer reporting agency.
8. **Independent Contractor:** A person contracted to provide specific services to the city.
9. **Intern:** Students who may be paid or unpaid who are working part-time or temporary for a department to fulfill a school requirement or to gain particular experience in a field of study.
10. **Motor Vehicle Record:** An individual's driving history obtained from the state where the applicant/employee driver's license is or was issued or through agencies with license to obtain these reports on the city's behalf.

11. **Municipal Records Retention and Disposition Schedule:** A records schedule that identifies and provides retention and disposition instructions for many records that have been identified as being produced and maintained in municipal administrative offices. These records are defined under Chapter 132 of the General Statutes of North Carolina. Chapter 121-5 mandates that these records be disposed of only in accordance with an official records retention schedule. Standard 13 of the Municipal Records Retention and Disposition Schedule addresses personnel records to include application and selection files.
12. **Reference Check:** A basic work profile from a professional reference provided by the applicant, generally consisting of: title, basic responsibilities, relationship, professional and interpersonal skills.
13. **Sexual Offender Registry:** This report will contain all information available in the applicant's state data repository.
14. **Social Security Verification:** This report will verify the issue date of the social security number, if the number has been reported deceased or not yet been issued. The report will also reveal other names used by the applicant, such as maiden names or aliases and addresses listed by subject when they have applied for credit.
15. **Volunteer:** A person under City of New Bern employee supervision who provides periodic or on-going services to the city without receiving or expecting payment.

## **Procedures**

1. The Human Resources Department shall determine and conduct the appropriate background investigation for each full-time, part-time, temporary, intern, and volunteer position. The following shall be required at a minimum:
  - Candidates for employment where the job duties require driving authorization or other related duties will be subject to a Motor Vehicle Records check.
  - Candidates for employment where the job duties include responsibility for initiating or affecting financial transactions or other related duties will be subject to credit history check.
  - Candidates for employment where the job duties include entering a private household, interaction with children or other related duties will be subject to sexual offender registry check.
  - Confirmation that the candidate has the degree or educational level required for the position, or as stated on the resume or application, can be conducted through the approved background checking vendors or the

candidate can be required to submit an official transcript. Copies of official high school transcripts may be provided. Official transcripts for education beyond high school must be sent electronically from the institution directly, or may be received in a sealed envelope from the college, university or school system in question and must be a certified copy.

2. Employment applications shall **not** require disclosure of an applicant's prior criminal history, and no such inquiry shall be made during the initial job application process unless it is necessary to fill unique positions that require extensive criminal background checks. However, if an applicant discloses any information regarding the candidate's criminal history by unsolicited voluntary oral or written disclosure, such disclosed information may be considered.
3. If a criminal background check is required, the city shall not conduct such a criminal background check, nor shall it make any inquiry of a candidate regarding their criminal history, until after making a conditional offer of employment except that criminal background checks may be conducted immediately for:
  - Volunteer positions;
  - Civil service positions within the city's police department; and
  - Information technology positions where such position has access to the city's police department information technology systems.
4. When a criminal background check is required for a city position other than those identified in Section 3, the job announcement for such position shall include the following statement: "Criminal Background Checks Required on final internal and external candidate(s) applying for this position with the City of New Bern."
5. Prior to conducting the pre-employment background check, the following must be completed by the final candidate:
  - City of New Bern employment application
  - Applicant Authorization and Consent for Release of Information form (Form B).
6. The final candidate shall be presented with the Summary of Rights Under the Fair Credit Reporting Act and Consumer Notification (Forms A and C).
7. All pre-employment background checks must be completed by one of the approved vendors under contract with the City of New Bern. The Human Resources Department will maintain the list of approved vendors.

8. Before taking an adverse action that is based in whole or in part on the information collected as part of the pre-employment background check, a copy of the adverse information and an Adverse Information Form must be emailed and sent by regular U.S. Mail to the candidate (Form D).
9. The candidate will have seven (7) calendar days from when the Adverse Information Form is emailed to contact the background check vendor if they wish to dispute or resolve any inaccuracies on the report and to submit any candidate letters, explanations, rehabilitation, and proof of error to the Human Resources Department. If no candidate correspondence is received by the Human Resources Department within seven (7) calendar days from the time and date the Pre-Adverse Action email was sent, the Human Resources Department will consider this as though the candidate is not contesting the findings, and Human Resources will move forward with submitting the background check to the City Manager for review. If the candidate submits correspondence to the Human Resources Department within the seven (7) calendar days from the time and date of the emailed Pre-Adverse Action notice was sent, a copy of the Human Resources Department's final analysis including the background check report, candidate letters, candidate submission of explanations, rehabilitation, proof of error in report, will be submitted to the City Manager for review. The City Manager will make a final decision within seven (7) calendar days of receiving the Human Resources Department's final analysis (including the candidate's correspondence).
10. The Human Resources Department will contact the candidate with the final decision made by the City Manager by phone, email and written correspondence, in the form of an acceptance letter or an Averse Action letter (Form E).

### **Responsibilities**

The Human Resources Department shall be responsible for the coordination of this Policy.

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Mark A. Stephens  
City Manager

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Date

**FORM A: CONSUMER NOTIFICATION**

Date

Applicant Name

Address

City, State, Zip

Dear:

This is to inform you that a consumer report or an investigative consumer report will be requested from City of New Bern's vendor, \_\_\_\_\_ a Consumer Reporting Agency (CRA). This report is for the purpose of evaluating your eligibility for employment, promotion, reassignment or retention as an employee. You have been asked to carefully read and sign an "Authorization for Release of Information" permitting the City's vendor to furnish the consumer report to us.

In accordance with the Fair Credit Reporting Act (15 U.S.C. §1681 et. seq.), you will be notified in writing before the City makes any adverse employment decision which is based in whole or in part on the consumer report.

Unless mandated by state law, a misdemeanor or felony conviction reported on a background check will not automatically disqualify you for employment with the City of New Bern. Consideration will be given to the nature and circumstances of the criminal conviction, the length of time since the conviction occurred, the age of the individual at the time of the conviction, evidence of rehabilitation, and the nature, duties, and responsibilities of the position and other evidence regarding fitness for the position such as character references. Examples of rehabilitation include a Certificate of Relief, classes taken, participation in civic groups, etc.

Sincerely,

**FORM B: APPLICANT AUTHORIZATION AND CONSENT FOR RELEASE OF INFORMATION**

This release and authorization acknowledges that the City of New Bern may now, or at any time while I am employed, contact personal references, conduct a verification of my education and licenses/certifications, employment/work history, motor vehicle records, and receive any criminal history record information pertaining to me which may be in the files of any Federal, State or Local criminal justice agency, and to verify any other information deemed necessary to fulfill the job requirements. The results of this verification process will be used to make employment decisions pursuant to City of New Bern policy. The City of New Bern will not request credit reports without proper notification in compliance with the Fair Credit Reporting Act.

I authorize the City's current employment verification vendor and any of its associates, to disclose orally and in writing the results of this verification process to the designated authorized representative of the City of New Bern. The City may at its discretion change the vendor and this release will remain in effect.

I have read and understand this release and consent, and I authorize the background verification. I authorize all persons, schools, current and former employers and other organizations and agencies to provide the City's employment verification vendor, or its associates with all information that may be requested. I hereby release all of the persons and agencies providing such information from any and all claims and damages connected with their release of any requested information. I agree that any copy of this document is as valid as the original.

I do hereby agree to release and discharge the City of New Bern, the employment verification vendor and their associates to the full extent permitted by the law from any claims, damages, losses, liabilities, costs and expenses or any other charge or complaint filed with any agency arising from the retrieving and reporting of information. According to the Fair Credit Reporting Act, I am entitled to know if employment was denied based on information obtained by my prospective employer and to receive a disclosure of the public record information and of the nature and scope of the investigative report. I have been given a summary of my rights under the Fair Credit Reporting Act.

\_\_\_\_\_  
Printed Name (Last, First, M.I.)

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## **FORM C: A SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT**

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. For more information, including information about additional rights, go to [www.ftc.gov/credit](http://www.ftc.gov/credit) or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if: a person has taken adverse action against you because of information in your credit report; you are the victim of identity theft and place a fraud alert in your file; your file contains inaccurate information as a result of fraud; you are on public assistance; you are unemployed but expect to apply for employment within 60 days. In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See [www.ftc.gov/credit](http://www.ftc.gov/credit) for additional information.

You have the right to ask for a credit score. Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender. You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See [www.ftc.gov/credit](http://www.ftc.gov/credit) for an explanation of dispute procedures.

Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information. Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

**FORM D: PRE-ADVERSE ACTION**

Date

Applicant Name  
Address  
City, State, Zip

Dear Applicant:

We are writing to inform you that in evaluating your application for employment, promotion, reassignment or retention as an employee we have received the enclosed consumer report. This notification is provided because an adverse employment decision may be based, in whole or in part, on this report. The report was prepared by \_\_\_\_\_ and authorization signed by you at the time of application. A copy of the authorization and a summary of your rights as a consumer are enclosed. \_\_\_\_\_ is not responsible for any employment-related determination.

If you have any questions regarding this report or believe that it may contain incorrect information, you may contact this company and they will respond to your inquiry. Their mailing address and phone numbers are listed below:

You have seven (7) calendar days from the mailing date of notice from the City to provide the City information to dispute the accuracy and/or explain the relevance of any conviction(s) or explain how a decision to bar you from employment is not job related and consistent with business necessity, or to submit any evidence of rehabilitation, before a final decision is made about your suitability for the position sought. Examples of rehabilitation include a Certificate of Relief, classes taken, participation in civic groups, etc.

Sincerely,

Enclosure: Consumer Report  
Copy of Authorization  
Consumer Rights Notification

**FORM E: ADVERSE ACTION NOTICE**

Date

Applicant Name  
Address  
City, State, Zip

Dear Applicant:

We are writing to inform you that we have decided not to offer you employment based upon the information we have received from a consumer report. The report was prepared by \_\_\_\_\_ pursuant to an authorization signed by you at the time of application. \_\_\_\_\_ is not responsible for any employment related determination and are unable to provide the specific reasons regarding our decision.

You may receive a free copy of the consumer report from \_\_\_\_\_ during the 60 day period described in the Fair Credit Reporting Act "FCRA" (15 U.S.C §1681j). You may also dispute the accuracy or completeness of any information as pursuant to FCRA 15 U.S.C. §1681m (a). Their mailing address and phone numbers are listed below:

Name of Consumer Reporting Agency  
Address  
City, State, Zip  
Phone Number

Sincerely,