

City of Madison

# Ban the Box

The Impact of “Banning the Box” on City Hiring and City Contractors

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## Overview

On May 6, 2014, the Common Council passed a resolution

Directing the City Human Resources Director and City Attorney to prepare a report and recommendation and any necessary ordinance or resolution for the Common Council regarding removal of questions regarding an applicant's criminal history from the City job applications, and whether such a policy should extend to any city contractors.

“Ban the Box” policies remove questions about an applicant's criminal history from the job application and help ensure that an applicant's criminal history is not considered until later in the hiring process. Such policies are intended to address hiring disparities between applicants with a criminal history and applicants without a criminal history. Studies have demonstrated that an applicant is half as likely to receive a call back for a position if they “checked the box.” In addition, African American men are disproportionately subject to arrest, conviction, and incarceration at a rate of 10 to 1 compared to white men. Ban the box is one tool that helps reduce the barriers to employment faced by ex-offenders. Employment can help promote economic self-sufficiency, build social capital, and reduce recidivism.

This report will analyze the City's hiring process and use of arrest/conviction information during the hiring process and how the hiring process will be affected if questions regarding convictions are removed from the application. The report will also provide information regarding the application of a “ban the box” policy to city contractors.

## The City's Current Hiring Process

The City of Madison Human Resources (HR) Department is in charge of recruiting for most City vacancies, including permanent and hourly/seasonal positions. The HR Department does not recruit for commissioned Police personnel. Also, while the HR Department assists the Fire Department in collecting application materials for commissioned Fire personnel, the Fire Department ultimately conducts its own background checks and makes decisions with the approval of the Police and Fire Commission.

The City uses NEOGOV, an on-line applicant tracking system, for all its hiring. The hiring process, outlined in the City of Madison Personnel Rules, is initiated by departments either when a new position is created or an incumbent leaves City employment. Once received in HR, the recruitment is assigned to one of four Human Resources Analysts (HR Analyst), who becomes responsible for managing the hiring process. The HR Analyst prepares a job announcement and posts the announcement through NEOGOV. Positions can be posted open and competitive, which means all people are invited to apply, including the public. However, some positions are only posted to City employees, either within a specific department or bargaining unit.

Applicants are required to apply for positions on-line using NEOGOV; paper applications are not accepted unless as part of a disability accommodation.<sup>1</sup> During the application process, the applicant is required to answer the following questions:

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<sup>1</sup> While the City's Occupational Accommodations Specialist has assisted applicants in using NEOGOV, no paper applications have been submitted since the City started using NEOGOV.

CONVICTIONS (for other than minor traffic violations):

FELONY(S)/MISDEMEANORS(S): In the past three years have you been convicted, placed on probation, fined, imprisoned, paroled, or placed on extended supervision for any criminal law violation(s) including criminal traffic offenses; OR are you currently on parole, probation or extended supervision from previous offenses; OR do you have a current pending charge for any offense including criminal traffic offenses? (IF YES, COMPLETE THE NEXT QUESTION BELOW)

ORDINANCE VIOLATION(S): In the past three years have you been convicted of, fined or do you currently have a pending charge for, any of the following civil law violations: Disorderly Conduct, Damage to Property, Trespass, Retail Theft, any offense involving Alcohol, Marijuana or any Controlled Substance, Drug Paraphernalia, or Resisting/Obstructing a Police Officer? (The Human Resources department routinely verifies conviction information listed) (IF YES, COMPLETE THE NEXT QUESTION BELOW)

Yes      No

If you answered "Yes" to the conviction question, please provide below the following information for each offense:

- a) Your Name at the Time of Offense
- b) Date (Mo/Yr)
- c) Court Location (City/State)
- d) List Conviction or Pending Charge
- e) Court Disposition

The language in this question is consistent with the City's Equal Opportunities Ordinance, Sec. 39.03(8)(i)3(a) and (b), MGO, which states:

- 3. Discrimination because of arrest record or conviction record is not prohibited if the employer, licensing authority, labor organization, or employment agency can show that the employee or applicant
  - a. Is subject to a pending criminal charge and the circumstances of the charge substantially relate to the circumstances of the particular job;
  - b. Has been within the past three (3) years placed on probation, paroled, released from incarceration, or paid a fine, for a felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; (Am. by Ord. 13,339, 6-7-03)

While the above questions appear as part of the NEOGOV application process, this information is not tracked on the employment application, but rather in an applicant's Master Profile. When an application is received, the HR Analyst ensures applicants meet the minimum qualifications for the position, as outlined in the job announcement. However, the HR Analyst is relying on the information in the application and does not review the applicant's Master Profile when making this determination.

The HR Analyst conducts any required examinations for the position, and then refers eligible candidates to the department for interview, according to the Personnel Rules or the applicable labor agreement. When applicants are referred through the NEOGOV system, only the application information is seen by the Department. The Department does not have access to the Master Profile, where the conviction information is stored. Departments are required to offer an interview to all referred candidates and the Department makes the final selection based on the interview outcome and reference checks.

At the point the Department is ready to make a job offer, if the nature of the job is such that a background check is needed, the Department contacts the HR Analyst to have the background check run. For instance, positions that require handling of money or direct contact with children will automatically have a background check run. However, at no time is the information from the background check shared with the Department. Rather, the background check is run and reviewed in HR. If there is a question as to whether anything on the report would impact on the performance of the job duties, it is reviewed by the Deputy City Attorney, who makes the final determination as to whether the candidate should be hired. If the candidate passes the background check, the Department is notified that it can proceed with making the job offer. If the background check prevents the candidate from being hired, the Department is only informed that the candidate has not passed the background check, but is not given any more specific information. The candidate is then informed by HR that s/he has not been selected for the position due to not passing a background check. That way the candidate has the opportunity to contest with HR if there is an error in the background check.

Police and Fire have different background check processes for their positions. All positions in the Police Department go through an extensive background check process because of the fact that most employees have access to sensitive databases and information. The Police Department is required to follow regulations set up by the State and/or Federal Government as it relates to allowing employees access to these computer programs which is why they conduct more extensive background checks. HR is not involved in the process. Similarly, the Fire Department conducts its own background checks for its commissioned personnel, without HR involvement.

### Effectiveness of the City's Current Process

NEOGOV tracks a number of statistical items. For instance, the application asks for voluntary data on the race and sex of the applicant. This data is not shared with the departments when names are referred. Reports can be generated on this information to determine the racial breakdown of candidates, the sex of candidates, how applicants are finding out about openings, etc. As noted in the Overview, a concern with having questions about convictions on the application is the potential adverse impact on African American candidates based on their higher arrest/ conviction/incarceration rates. However, looking at NEOGOV data from the first 2 years of use reveals the following:

Table 1-Ethnic Breakdown of Applicants 2013 v. 2012<sup>2</sup>

2013 Numbers	Madison Demographics (2010 Census)	Employment Applications	Total on Eligible Lists	Total on Referred Lists	Total hired
White or Caucasian	75.60%	71.65%	75.78%	74.81%	80.08%
Black or African American	7.07%	15.36%	11.41%	12.34%	5.84%
Hispanic or Latino	5.45%	4.21%	4.18%	4.21%	5.23%
Asian	7.34%	2.48%	2.12%	2.33%	2.82%
Other/multi-racial	4.22%	3.40%	3.16%	4.03%	4.02%
American Indian or Alaskan Native	0.32%	0.57%	0.62%	0.59%	0.60%
Native Hawaiian or Other Pacific Islander	0.00%	0.13%	0.19%	0.22%	0.20%
Unknown	0.00%	2.21%	2.54%	1.48%	1.21%
	100.00%	100.00%	100.00%	100.00%	100.00%

2012 Numbers	Madison Demographics (2010 Census)	Employment Applications	Total on Eligible Lists	Total on Referred Lists	Total hired
Breakdown by Ethnicity					
White or Caucasian	75.60%	74.92%	80.02%	79.06%	78.95%
Black or African American	7.07%	12.39%	9.07%	10.61%	10.53%
Hispanic or Latino	5.45%	4.03%	3.43%	3.49%	4.21%
Asian	7.34%	3.00%	2.10%	1.89%	1.05%
Other/multi-racial	4.22%	2.66%	2.44%	3.40%	3.95%
American Indian or Alaskan Native	0.32%	0.37%	0.23%	0.05%	0.00%
Native Hawaiian or Other Pacific Islander	0.00%	0.16%	0.17%	0.09%	0.00%
Unknown	0.00%	2.47%	2.55%	1.42%	1.32%
	100.00%	100.00%	100.00%	100.00%	100.00%

This data shows that in both 2012 and 2013, the City received applications from African American candidates in greater proportions than African Americans are found in the general City population. As of the 2010 census, African Americans make up 7.07% of the City's population, but in 2012, 12.39% of applicants were African American, and this number increased to 15.36% in 2013.

### Banning the Box on the City of Madison Application

The City of Madison supports the vision behind Banning the Box. To this end, the City commits to removing the aforementioned questions from the employment application in NEOGOV. The City will continue its existing practice of having Departments inform HR of a selected candidate before a background check is conducted. This background check will continue to be conducted

<sup>2</sup> The reporting period for 2012 is November 1, 2011-October 31, 2012, and for 2013 is November 1, 2012-October 31, 2013. This coincides with the anniversary date of when the City began using the NEOGOV system, November 1, 2011.

and reviewed by HR, under the guidance of the City Attorney's Office. This way, Departments do not have access to any conviction information about a candidate. The City strongly believes that Departments should not have access to this information at any point in the process so that it does not have any impact on their selection of the best-qualified candidate. In some "Ban the Box" models, it is recommended that the hiring agency have this information for use at an interview to allow the applicant an opportunity to discuss the information further. The City believes that its existing policy of not even running the check until a final selection is made, and keeping the Department out of the loop regarding this information, provides a greater advantage to the candidate as the conviction information is never even considered by the Department, and is only reviewed as a final step before hire.

As noted earlier, the City currently does well at attracting African American and other minority applicants. The City is also involved in a number of efforts designed to increase the diversity of applicants, including partnerships with the Urban League and YWCA. Therefore, it may be difficult to measure the actual impact of banning the box. However, HR will continue to monitor the diversity of its applicants through the NEOGOV system.

Finally, the City recommends allowing the Police and Fire Departments to continue seeking conviction information at the time of application, allowing Police to continue running its own background checks for all positions, and allowing Fire to continue this practice for commissioned personnel.

## Extending "Ban the Box" to Contractors and/or Vendors

### Lessons Learned From Other Cities

Department of Civil Rights staff conducted research on the extension of "Ban the Box" policy to contractors and/or vendors. The research included contacting cities that implemented this policy, reading existing ordinances, and speaking to representatives from national coalitions. Currently, there are sixty-two local jurisdictions across the United States that have adopted "Ban the Box" policies. Seventeen cities extended the policy to contractors and/or vendors. The following are examples of cities that have implemented "Ban the Box" policy:

#### **Richmond, CA**

On November 22, 2011, the Richmond City Council passed a measure to "Ban the Box" on City of Richmond applications. Twenty months later, on July 30, 2013, the City Council voted to broadly expand the "Ban the Box" policy to contractors and subcontractors seeking business with the City of Richmond. All contractors are required to submit a copy of their employment application and self-certify compliance with "Ban the Box" policy. The ordinance prohibits inquiry regarding an applicant's criminal history, unless a background investigation is required by statute or the position has been defined as "sensitive." On December 17, 2013, the Richmond City Council passed a resolution establishing the definition of "sensitive" position. The ordinance also states the City Manager shall "conduct periodic, random reviews to assess compliance". Violation of "Ban the Box" policy is subject to contract termination or civil penalties.

In reference to monitoring contractors and vendors, Sal Vaca, the Director of the Employment and Training Department, stated “we are expecting an increase on our workload for compliance and there will be a need for additional staff support and cost, but too early to quantify at this point.”

### **Boston, MA**

In 2004, Boston implemented a “Ban the Box” policy in city government to aid in the deterrence of discrimination against applicants in the protected class of “ex-offender,” or person with criminal history. The City of Boston removed all criminal background inquiries from their initial applications, with some statutory exceptions. In revision, the application contains an anti-discrimination statement explaining the City of Boston’s compliance with equal employment opportunity laws. In addition, the statement notes the protection of “ex-offender” status under the City of Boston’s civil rights laws. This “Ordinance Regarding CORI” (Criminal Offender Record Information) allowed the City of Boston to focus on development of a fair and equitable screening system to positively serve both employer and applicant. The City of Boston Office of Civil Rights was given the authority to promulgate the regulations of “Ban the Box” policy.

Two years later, in 2006, Boston was able to extend “Ban the Box” system developed by the Human Resources Department to an estimated 50,000 private vendors contracting with the City of Boston. This extension included a requirement to remove all questions surrounding criminal history from job applications of each contractor and vendor. This law was intended to ensure those supplying services to the City of Boston implement a fair standard of practice in screening individuals with criminal history.

The City of Boston did not allot additional funds to monitor compliance of the program. Rather, the policy is monitored through a complaint-driven process through a “Discrimination Testing Program” crafted by the Massachusetts Commission Against Discrimination (MCAD). If employers do not comply, they are subjected to possible fines of \$1,000 for a first-knowing violation, \$2,500 for a second-knowing violation, and \$5,000 for a third and subsequent knowing violation.

### **Newark, NJ**

On September 19, 2012, the City of Newark Municipal Council passed a “Ban the Box” ordinance which applied to the City, private employers, local licensing, and housing. Per ordinance, employers of Newark are prohibited from inquiring about an applicant’s criminal history until a conditional offer of employment is extended. The ordinance also includes a limited “look back” period for offenses. This “look back” policy includes: eight years for indictable offenses, five years for disorderly persons, and municipal ordinance convictions. Violations have two tiers: Type 1 violation may be subject to a fine of up to \$500; and Type 2 violation may be subject to a fine of up to \$1000 each time. The policy also mandates written notices to denied applicants.

From the cities contacted, staff identified the following best practices for implementation:



- Many cities implemented “Ban the Box” policies internally before extending the policy to contractors, vendors, or private employers allowing time to develop the initiative. This includes Boston, Cambridge, Detroit, Richmond, among others.
- Educational outreach and training efforts are crucial to the success of “Ban the Box” policies. For example, New York State developed a guide to help employers fairly evaluate candidates with conviction histories while protecting themselves from negligent hiring claims. In Boston, contractors and vendors requested training on how to implement this policy.
- For positions required by statute or of a sensitive nature, a criminal history background check is not performed until the employer has established the applicant as otherwise qualified.
- Include a non-discrimination statement on job applications protecting people with arrest and conviction records. Avoid stigmatizing language such as “ex-offenders” or “ex-felons”.
- Adopt clear standards for evaluating arrest and conviction records. Avoid criteria language such as “nature and gravity of the offense” or “frequency” of convictions, because it invites subjectivity and prejudice.
- Centralize reviewing conviction history information to limit the number of people with access to confidential information.
- If the applicant is rejected because of a conviction, provide the applicant with a written notice of the specific conviction that is considered job-related.
- Provide the applicant with a copy of any background checks that were performed and give applicant a chance to verify or dispute the report.
- For contractors and/or vendors, effective enforcement should include an agency that has the infrastructure to process complaints and to audit compliance.
- Provide a timely notice of “Ban the Box” policy to contractors and/or vendors.
- Provide resources for businesses to “Ban the Box” successfully.

### Next Steps

In order to ensure successful implementation of “Ban the Box” policies, the following actions are suggested:

- Before extending the “Ban the Box” policy to contractors and/or vendors, the City of Madison should notify businesses of this policy, gather input on implementation, develop internal and external training, establish guidelines for enforcement, determine appropriate staff needed, and train compliance monitors.
- Offer public hearing before expanding policies externally to address concerns.
- Provide notice to contractors and/or vendors the City has “Banned the Box” and will be requiring City contractors and/or vendors to do the same.
- Establish guidelines for expanding of “Ban the Box” policies to contractors and/or vendors.
- Provide training to businesses.
- Expand “Ban the Box” policies to city contractors and/or vendors after implementation of internal policies.

- Offer public hearings and engagement with city contractors to address concerns before expanding policies externally.

## Recommended Resolution

The recommended resolution removing the question regarding an applicant criminal history from the City application is included below. An ordinance is not required to remove the question the City application. Should the Mayor and Common Council determine that is appropriate to expand “Ban the Box” policies to contractors and/or vendors an ordinance may be required.

## Resolution

### Title

Accepting the Ban the Box Report and removing questions regarding an applicant’s criminal history from the City of Madison employment application for all City of Madison job vacancies except those in the Police Department and commissioned fire personnel.

### Body

WHEREAS, the City of Madison is committed to fostering a community where all members of our community have equitable employment opportunities, and

WHEREAS, the City can lead by example to ensure that employers can make excellent hiring and employment decisions based on relevant work qualifications without any opportunity to improperly consider a person's criminal record, and

WHEREAS, the City seeks to reduce recidivism through family supporting employment opportunities for qualified candidates with previous criminal histories; and

WHEREAS, the City has historically included questions regarding criminal history on job applications, and

WHEREAS, questions regarding criminal history may have an adverse impact on the city applicant pools; and

WHEREAS, criminal history may be ascertained during later stages of the employment process when it is determined such information is necessary; and

WHEREAS; other states and municipalities have passed laws that prohibit the use of questions regarding an applicant's criminal history on an employment application, called Ban the Box policies;

WHEREAS, the Mayor and Common Council requested a report and recommendation and any necessary ordinance or resolution for the Common Council regarding removal of questions regarding an applicant’s criminal history from the City job applications, and whether such a policy should extend to any city contractors,

NOW, THEREFORE BE IT RESOLVED, the attached Ban the Box report is accepted and the City Human Resources Director shall remove all questions regarding an applicant's criminal history from the initial employment application for all City of Madison vacancies except those in the police department and commissioned fire personnel.