

Executive Order No. 135

TO: All Departments and Agencies Under the Mayor

FROM: Michael B. Hancock, Mayor

DATE: July 25, 2016

SUBJECT: The Use of Background Checks in Hiring and Employment Decisions

Purpose: City employees are in a position of public trust in the performance of their duties and must operate in a manner that maintains the highest standards of honesty, integrity and public confidence. In order to prevent unknowingly employing someone who may present a high risk for impropriety, misconduct, malfeasance, or criminal conduct, City agencies are required to complete appropriate background checks on all people working for the City per section 2.1 below.

To accomplish this purpose, this Executive Order is designed:

- To provide reasonable standards to identify instances where it is appropriate for an agency to obtain a background check.
- To provide reasonable standards that direct agencies in the collection and use of background checks.
- To ensure agencies comply with the federal, state, and local laws which regulate background checks and the use of information obtained through background checks.

1.0 Applicable Authority

The applicable authority relevant to the provisions and requirements of this Executive Order No. 135 are found in Section 2.2.1 O (A) & (C) of the Charter of the City and County of Denver, 2002 revised. Former Executive Order No. 135 titled "The Use of Background Checks in Hiring and Employment Decisions," dated November 20, 2015 is hereby cancelled and superseded by this Executive Order No. 135, The Use of Background Checks in Hiring and Employment Decisions, dated July 25, 2016.

2.0 Background Check Policy

- 2.1. The criminal background check requirement in this Executive Order applies to all paid and unpaid City positions under the Mayor, except elected officials, and volunteers who provide or are anticipated to provide less than forty (40) hours of service per year. A criminal background check must be completed for self-employed Independent Contractors.

2.2. When Background Checks Shall (and May) be Performed

2.2.1. A criminal background check shall be conducted when an employee is promoted, demoted, re-allocated, transferred or moved to a new or different position with a change in job classification.

2.2.2. An agency may conduct background checks during employment-related investigations, or when an employee has self-reported an arrest or conviction, or when there is credible information leading to a reasonable belief that an employee has failed to self-report an arrest or conviction, or when the agency is considering disciplining an employee.

2.2.3. Background checks may be conducted as frequently as necessary, within reason, to maintain the integrity of the workforce.

2.3. All offers of employment shall be made contingent on the satisfactory completion of a background check. All offers of employment, oral and written, shall include the following statement: "This offer is contingent on the verification of credentials and other information required by law and City and County of Denver policies, including the completion of a successful background check."

2.4. Agencies are responsible for arranging for background checks required by this Executive Order to be conducted. The agency may conduct the background check itself, or contract with the City's outside vendor(s) to conduct the background check. Agencies and departments utilizing the Office of Human Resources (OHR) for recruitment, hiring, administering or processing of employee personnel actions shall receive assistance from OHR, if requested, in processing background checks through the City's outside vendor(s). The Agency is responsible for paying the cost of background checks conducted by OHR on their behalf.

2.5. The background check for all employees must include at least a criminal background check as defined in Section 3.1.1. Additional types of background checks may be required and/or permitted depending on the type of position and nature of the duties performed. These additional background checks may include, but are not limited to: Employment History Verifications, Drug Testing, Education, Degree Verification, Motor Vehicle Record (MVR), Commercial Driver's License (CDL), Professional License and Certification, Finger Printing, Child Abuse/Neglect Registry, Medicare/Medicaid Fraud Database, Polygraph Examination (DOS), and Credit History.

2.5.1. A successful background check must be completed before the candidate's first day of work and before a current employee begins work in a new position, as defined above.

2.5.2. Exceptions to this policy include:

- Under rare and unusual circumstances, and only with approval of the Executive Director of the Agency and the Executive Director of Human Resources, may a candidate or employee begin work before the successful completion of the full background check.
- If the candidate or employee has successfully completed a background check within the last twelve (12) months and is being considered for re-hire, promotion, demotion, or lateral transfer, the background check does not have to be conducted again if there was no criminal history, unless the new position holds new or additional education, certification, licensure, or experience requirements.
- If the candidate or employee is being considered for re-hire, promotion, demotion, or lateral transfer and has completed a background check within the last (12) months but it contained criminal history, then a new background check must be conducted.

2.5.3. Under no circumstances may a candidate or employee begin work before successful completion of a criminal background check.

2.5.4. All volunteers who provide or are anticipated to provide forty (40) or more hours of service per year must pass a criminal background check before beginning service. For volunteers who provide or are anticipated to provide less than forty (40) hours of service per year, a criminal background check may be conducted at the Agency's discretion.

3.0 Types of Background Checks

3.1. Criminal Background Check

3.1.1. The City shall not inquire about an applicant's criminal history until it has been determined that the applicant is otherwise qualified for the position and has been extended a conditional offer of employment. However, the City may inquire about an applicant's criminal history at an earlier stage in the application process for positions where law or regulations prohibit employment of an individual with certain convictions.

3.1.2. A criminal background check must include, but is not limited to, a review of the following:

- Social Security Trace;
- Federal Criminal Records (includes wants, warrants, arrests, convictions, and incarceration);

- Colorado Criminal Records (includes wants, warrants, arrests, convictions, and incarceration);
- Criminal Records from other States if the individual disclosed that s/he lived in another state in the last seven years (includes wants, warrants, arrests, convictions, and incarceration);
- Sex Offender Registry

3.1.3. For individuals applying for or holding a position as a Code Enforcement Agent, the criminal background check must also include a review of county criminal records for all counties in which the individual has resided (includes wants, warrants, arrests, convictions, and incarceration).

3.1.4. An individual may be required to provide digital fingerprints for any position that requires a criminal background check at the discretion of the appointing authority, or if required by law. Examples include, but are not limited to, positions with access to NCIC/CCIC databases, certain positions at the Department of Human Services, and all Aviation Department employees.

3.1.5. A criminal background check conducted by an outside vendor shall include all convictions for the last seven (7) years. A criminal background check conducted by an outside vendor may include additional convictions beyond seven (7) years when permitted or required by law.

3.1.6 Criminal Background Checks and Department of Safety Employees

3.1.6.1 An applicant for a position in the Department of Safety will be disqualified from consideration for a sworn position if he or she has a felony conviction or a deferred judgment for a felony conviction.

3.1.6.2 A social security trace is not required as part of the criminal background check for applicants for a sworn position in the Department of Safety.

3.1.6.3 A criminal background check is not required for sworn Department of Safety employees that are re-allocated, transferred, demoted or otherwise moved within the Department of Safety.

3.1.6.4 Notwithstanding section 3.1.6.3 of this Executive Order 135, all Department of Safety employees must pass a criminal background check before being promoted.

3.1.7 Using Information Obtained In a Criminal Background Check

- 3.1.7.1 If the criminal history check reveals any convictions, the hiring agency will review the report and evaluate each conviction, including any additional information, before the offer of employment is confirmed or withdrawn.
- 3.1.7.2 An agency must consider: (1) the nature and gravity of the conviction; (2) whether there is a strong correlation between the criminal behavior and the job sought; (3) the number of convictions; (4) the recentness of the convictions; and (5) evidence that the applicant has been rehabilitated (if any).
- 3.1.7.3 The hiring authority is strongly encouraged to consult with the City Attorney's Office and the OHR before denying a position to an employee or prospective employee on the basis of the employee or prospective employee's criminal history.
- 3.1.7.4 The existence of a conviction does not automatically disqualify an individual from employment except where laws or regulations prohibit employment of an individual with certain convictions.

3.1.8 Arrest Records

- 3.1.8.1 Agencies should be careful to distinguish arrests from convictions.
 - An arrest merely establishes that a law enforcement agency charged an individual with committing a crime. It does not establish that the individual engaged in criminal conduct. The individual is presumed innocent until proven guilty beyond a reasonable doubt.
- 3.1.8.2 Agencies shall not deny employment based solely on an arrest record.
- 3.1.8.3 Agencies may deny employment based on conduct underlying the arrest only where:
 - The conduct is relatively recent;

- The Agency has verifiable information regarding the conduct and evidence that it did, in fact, occur; and
- There is a strong correlation between the conduct and the duties of the position.

3.2. Experience/Employment Verification

3.2.1. An experience/employment verification may include, but is not limited to, the following:

- Review/verification of the employee or prospective employee's past seven- (7) year employment history. Documents provided by a candidate do not satisfy the experience verification unless they are W-2 forms or other official documents collected and verified.
- If the employee or prospective employee is a current or former Career Service/Civil Service employee of the City and County of Denver or covered by Denver City Charter §9.1 (E) (ii-v, viixiii, xiv), a review of the employee's or prospective employee's official personnel file.
- Information from City and County of Denver appointing authorities, supervisors, and/or human resources personnel for additional background information.

3.2.2. An experience/employment verification is only required for candidates for exempt positions and candidates for positions which require previous work experience.

3.2.3. An experience/employment verification may go back more than seven (7) years if necessary to verify the work experience required for the position.

3.3. Education Verification

3.3.1. An education verification must be completed for all positions which require a college or advanced degree.

3.3.2. An education verification consists of confirming that the employee or prospective employee has the required college and/or advanced degree. Documents provided by a candidate do not satisfy the education verification unless they are collected and verified.

3.3.3. In instances where OHR has allowed for a work-experience equivalency to substitute for education as a minimum requirement for employment,

an education background check is only required if the employee is using college credit to meet the minimum qualifications of the position. If a candidate is substituting work experience for the education requirement, work experience shall be verified.

3.4. License/Certification Verification

3.4.1. A license/certification verification must be completed for all positions that require a professional/trade license or certification.

3.4.2. A license/certification verification consists of confirming an employee or prospective employee possesses the required license or certification. Documents provided by a candidate do not satisfy the license/certification verification.

3.5. Motor Vehicle Records Checks

3.5.1. A motor vehicle records check must be completed for all positions which require driving a personal or City vehicle as a regular part of their duties and responsibilities.

3.5.2. Agencies that employ individuals who drive City vehicles or receive mileage reimbursement may periodically review motor vehicle records in accordance with Executive Order 3. For positions that require a Commercial Driver's License (CDL), a motor vehicle check must be performed at least as often as required by federal Department of Transportation regulations.

3.5.3. A motor vehicle records check consists of a review of an employee or prospective employee's driving record including, but not limited to, whether the individual has a current valid driver's license and an acceptable driving record. An acceptable driving record will be determined by the hiring authority/agency by position and assigned duties and responsibilities.

3.6. Credit Checks

3.6.1. A credit check may only be performed on employees or prospective employees where information in a credit report is "substantially related" to the position for which the employee or prospective employee is being evaluated.

3.6.1.1. A credit report is "substantially related" to the position if the position meets both of the following criteria:

- The position is executive or management personnel (Director level and above), or professional staff reporting to executive or management personnel;

-AND-

- The position involves at least one (1) of the following duties:
 - Setting the direction or control of a division, unit, or agency of the City;
 - A fiduciary responsibility to the employer;
 - Access to customers', employees', or the employer's personal or financial information other than information customarily provided in a retail transaction; or
 - The authority to issue payments, collect debts, or enter into contracts.

3.6.2. The City shall not require an employee or prospective employee to consent to a request for a credit report that contains information about the employee's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers as a condition of employment unless: (1) the report is required by law; OR (2) the report is substantially related to the employee or prospective employee's current or potential job and the City has a bona fide purpose for requesting and using information in the credit report. That purpose must be disclosed in writing to the employee or prospective employee.

3.6.3. The City may, but is not required to, inquire further of an employee or prospective employee to give him or her the opportunity to explain any unusual or mitigating circumstances where the consumer credit information may not reflect money management skills but, rather, is attributable to some other factor.

3.6.4. If the City relies, in whole or in part, on consumer credit information to take adverse action, the City shall disclose that fact and the particular information upon which the City relies, to the employee or applicant. This disclosure must be made: (1) to an employee in writing; and (2) to an applicant in the same medium in which the application was made (for example if the applicant applied for the job electronically, the disclosure must be made to the applicant electronically, such as by e-mail).

4.0 Hiring and Promotion Decisions

Hiring and promotion decisions are at the discretion of the agency. Agencies are strongly encouraged to consult with the City Attorney's Office and the OHR before denying a position to an employee or prospective employee based on information obtained through or related to a background check.

5.0 Adverse Action Process

5.1. Background Checks Conducted By Third-Party Vendor

5.1.1. Notice of Intended Adverse Action to Applicant or Employee: Hiring authorities/agencies who intend to take an adverse action against an applicant or employee must provide notice, through the vendor, in writing, that it is considering this action based entirely, or in part, on the information found in a background check. The hiring authority/agency must disclose to the applicant or employee, through the vendor, the particular information upon which the agency relied when deciding to take an adverse employment action. Along with the notice, the vendor must provide the rights under the Fair Credit Reporting Act (FCRA) and allow the candidate the opportunity to review the report. The agency must wait five business days after service of the notice before the final adverse action occurs.

5.1.2. Final Adverse Action Notifications: Upon completion of the pre-adverse action notification and lapse of at least five (5) business days, the hiring authority/agency or vendor will contact the candidate to inform the employee or applicant in writing that the contingent offer of employment is rescinded.

5.2. Agencies that conduct their own background checks and do not use an outside vendor are not required to send candidates/employees the adverse action notices identified in section 5.1.

6.0 Third-Party Staffing Contracts

The City contracts with third-party staffing vendors that provide temporary employees. These temporary employees perform work for the City but are paid through the vendor. All such contracts must include a provision requiring that temporary employees successfully complete a criminal background check to be performed or procured by the vendor before they begin work for the City.

7.0 Record Retention

The OHR's third-party background check vendor shall maintain records of all background check data for five (5) years after the background check is completed or the adverse action

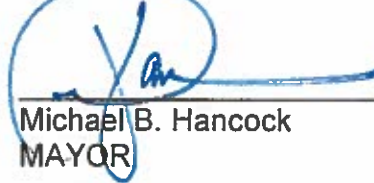
is taken, whichever occurs later. Except for Criminal History Background Checks performed by the Department of Aviation in accordance with federal regulations, agencies that conduct their own background checks and do not utilize the OHR's third-party background check vendor must maintain all background check data for five (5) years after the background check is completed. These records should indicate the components checked, the name of the department personnel or third party vendor completing the verification, the date of the verification, and the results of the verification.

Approved for Legality

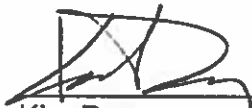


Shaun Sullivan
Interim City Attorney

Approved:



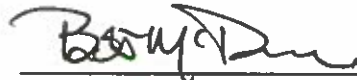
Michael B. Hancock
MAYOR



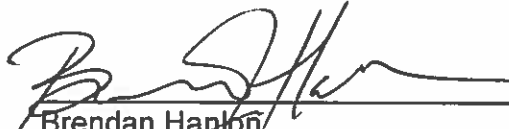
Kim Day
Chief Executive Officer
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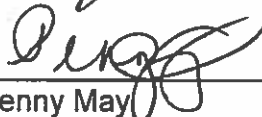
Brad Buchanan
Executive Director of Community
Planning and Development



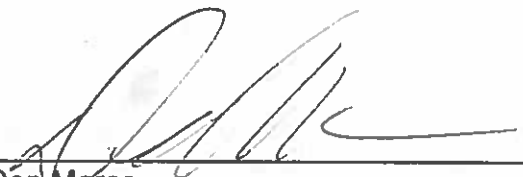
Bob McDonald
Executive Director of Environmental Health




Brendan Harlow
Chief Financial Officer



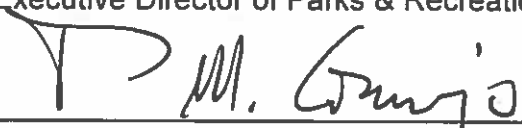
Penny May
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