



CITY of WILMINGTON North Carolina

ITEM O3b

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5/1/2018

City Council
City Hall
Wilmington, North Carolina 28401

Dear Mayor and Councilmembers:

Attached for your consideration is an ordinance amending Chapter 8, Article 1, Section 8-5 of the City Code of Ordinances. This section defines the positions in which criminal background checks and credit history checks are required for applicants of employment with the City.

This ordinance states that the City will not conduct background checks or credit history checks on applicants unless it is required by law or it has been determined that the relevant position is of such sensitivity that such a check is warranted. If the City has determined that a background check or credit history check is warranted for the position, such a check will be conducted only on the final candidate(s) for the position. If such a check yields information that is of concern to the City, the candidate will be given an opportunity to review the findings and present information regarding inaccuracy, mitigating circumstances, and rehabilitation.

The changes made to this ordinance further clarify and define the types of positions in which a criminal background check or credit history check will be performed and also provides an opportunity for final candidates with conviction records to proceed in the hiring process. Discretion is provided to allow candidates with any misdemeanor criminal conviction, or with any felony conviction where the last date of adjudication, incarceration, probation, or parole occurred over seven (7) years prior to the date of the job posting, to proceed in the hiring process. Such discretion will only be used if the candidate presents sufficient information of inaccuracy, mitigating circumstances, and/or rehabilitation.

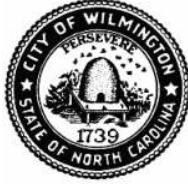
This ordinance is consistent with the City's commitment to ensuring the hiring practices of the city do not unduly deny or discourage people with criminal arrest or conviction records from appropriate employment with the City.

Passage of the attached Ordinance is recommended.

Respectfully submitted,

Sterling B. Cheatham,
City Manager

Ordinance



City Council
City of Wilmington
North Carolina

Introduced By: Sterling B. Cheatham, City Manager

Date: 5/1/2018

**Ordinance Amending the Code of Ordinances of the City of Wilmington, North Carolina,
Part II General Ordinances, Chapter 8 Personnel**

LEGISLATIVE INTENT/PURPOSE:

Pursuant to Article 1, Section 8-5 of the Wilmington City Code, the city requires criminal background checks for applicants for specific positions in an effort to protect the city from possible conduct which might be detrimental to the city, its people and its property. This section defines the positions in which criminal background checks are required for applicants of employment with the city.

THEREFORE, BE IT ORDAINED:

SECTION 1. That Section 8-5 of the city code is hereby amended to read as follows:

“Sec. 8-5. - Criminal history background checks and/or credit history checks required of all applicants for specific positions.

- (a) In an effort to protect the city from conduct which might be detrimental to the youth served by the city, no person who is known by the Chief of Police of the city, or his designee, to have been convicted of a misdemeanor assault within the previous seven (7) years from the job posting date for employment or of any crime involving kidnapping, child abuse, sexual battery, rape, statutory rape, first or second degree forcible sexual offense, statutory sexual offense, sexual activity by parent or guardian, contributing to the delinquency of a minor, disseminating obscene materials to a minor, sexual exploitation of a minor, crime against nature, incest, indecent liberties, indecent exposure, obscenity, or homicide may be offered employment with the city in any position working with youth or supervising youth including all recreation employees, any other employees in a position to implement or coordinate any program for the youth of the community, any employee whose essential function is the maintenance of city parks or park property, any director or deputy director responsible for the above-referenced positions, and those classification titles that supersede those listed above. Additionally, checks will be performed on those individuals given permits as vendors, performers or other agents or contracted individuals for city sponsored programs or events where the individual will interact with youth/vulnerable populations. Further, no individual who applies to volunteer in any youth program sponsored by the city shall be approved if known by the Chief of Police of the city to have been convicted of any misdemeanor or felony crimes involving the activities listed in this paragraph.

- (b) In an effort to protect the city from possible conduct which might be detrimental to the city, its people, and its property, any person who is known by the Chief of Police of the city, or his designee, to have been convicted of any misdemeanor crime within the previous seven (7) years of application for employment involving theft, concealment, fraud, worthless check, or misappropriation, or of any felony crime involving theft, burglary, embezzlement, robbery, fraud, bribery, misappropriation, homicide, or manslaughter shall not be offered employment with the city in any position where the employee would have the ability to change or create city financial records, collect revenue in any form to include cash, credit or electronic funds transfer, any position responsible for issuing permits or code violations, or any position where a function of the position includes managing grant funds.
- (c) In an effort to maintain the integrity of city leadership and to promote public safety, criminal history background checks will be performed on all final applicants for employment for any position appointed by City Council, all Department Directors, anyone who reports directly to the City Manager, City Attorney or City Clerk, and all sworn and non-sworn employees of both the Wilmington Police Department and the Wilmington Fire Department. Any individual convicted of a crime as indicated in sections (a) or (b) above will not be offered employment with the city.
- (d) In an effort to protect the city's financial assets, credit history checks will be performed on all final applicants of employment for all positions with the ability to change or create city financial records, or to collect revenue in any form to include cash, credit, or electronic funds transfer. Additionally, credit history checks will be performed on final applicants for employment for any position appointed by City Council, all Department Directors, and any other position that reports directly to the City Manager.
- (e) Further, no person who is known by the Chief of Police of the city, or his designee, to have been convicted of a misdemeanor violation of the controlled substances act within seven (7) years from the job posting date or any felony violation of the controlled substances act while an adult, or comparable charge from another jurisdiction may be offered employment in any of the positions listed in sections (a) - (c).
- (f) Final applicant(s) for the above-noted positions shall be required to provide any and all necessary personal identification in order that the Chief of Police or his designee, might cause a thorough search to be made of local, state, and national criminal history records to determine if the applicant has a history involving criminal conviction for any of the crimes enumerated in the previous paragraphs of this ordinance. The Chief of Police, or his designee, shall cause a check for criminal history records to be made of all final applicants for any of the enumerated positions including volunteer positions. The city shall pay the cost of such search of criminal records. The Chief of Police shall cause all records to be forwarded to the City Manager or his/her designee.

- (g) Final applicants for one of the positions described in this section who have a criminal history involving a conviction for one of the crimes related to that position, as described in this section, or a credit history that raises significant concerns regarding the fitness of the employee for employment, shall be provided the opportunity to challenge the accuracy of the information, or to provide evidence of mitigation. After having done so, the City Manager, or his/her designee, may, in his/her discretion, allow applicants with any misdemeanor criminal conviction, or with any felony conviction where the last date of adjudication, incarceration, probation, or parole occurred over seven (7) years prior to the date of the job posting, to proceed in the hiring process. If the challenge is not approved or accepted, the applicant will be removed from further consideration of employment relative to the positions named in this ordinance.”

Adopted at a _____ meeting
on _____ 2018

Bill Saffo, Mayor

ATTEST:

APPROVED AS TO FORM:

Penelope Spicer-Sidbury, City Clerk

City Attorney

Sec. 8-5. - Criminal history background check required of all applicants for specific positions.

(a)

In an effort to protect the CCity from conduct which might be detrimental to the youth served by the City, no person who is known by the Chief of Police of the City, or his designee, to have been convicted of a misdemeanor assault within the previous seven (7) years from the job posting date for employment or of any crime involving kidnapping, child abuse, rape, statutory rape, first or second degree forcible sexual offense, statutory sexual offense, sexual activity by parent or guardian, contributing to the delinquency of a minor, disseminating obscene materials to a minor, sexual exploitation of a minor, crime against nature, incest, indecent liberties, indecent exposure, obscenity, or homicide may be offered employment with the City in any position working with youth or supervising youth including all recreation employees, any other employees in a position to implement or coordinate any program for the youth of the community, any employee whose essential function is the maintenance of City parks or park property, any director or deputy director responsible for the above-referenced positions, and those classification titles that supersede those listed above. Additionally, checks will be performed on those individuals given permits as vendors, performers or other agents or contracted individuals for City sponsored programs or events where the individual will interact with youth/vulnerable populations. Further, no individual who applies to volunteer in any youth program sponsored by the City shall be approved if known by the Chief of Police of the City to have been convicted of any misdemeanor or felony crimes involving the activities listed in this paragraph.

(b)

In an effort to protect the City from possible conduct which might be detrimental to the City and its property, any person who is known by the Chief of Police of the City, or his designee, to have been convicted of any misdemeanor crime within the previous seven (7) years of application for employment involving theft, concealment, fraud, worthless check, misappropriation or of any felony crime involving theft, burglary, embezzlement, robbery, fraud, bribery, misappropriation, homicide or manslaughter shall not be offered employment with the City in any position where the employee would have the ability to change or create City financial records, collect revenue in any form to include cash, credit or electronic funds transfer, or any position responsible for issuing permits or code violations, or any position where a function of the position includes managing grant funds.

(c)

In an effort to maintain the integrity of City leadership and to promote public safety, criminal history background checks will be performed on all final applicants for any position appointed by City Council, all Department Directors, anyone who reports directly to the City manager, City Attorney or City Clerk and all sworn and non-sworn employees of both the Wilmington Police Department and the Wilmington Fire Department. Any individual convicted of a crime as indicated in sections a or b above will not be offered employment with the City.

d)

In an effort to protect the City's financial assets, credit history checks will be performed on all final applicants of employment for all positions with the ability to change or create City financial records, or to collect revenue in any form to include cash, credit or electronic funds transfer. Additionally, credit history checks will be performed on final applicants for

employment for any position appointed by City Council, all Department Directors, and any other position that reports directly to the City Manager.

(e)

Further, no person who is known by the Chief of Police of the City, or his designee, to have been convicted of a misdemeanor violation of the controlled substances act within seven (7) years from the job posting date or any felony violation of the controlled substances act while an adult, or comparable charge from another jurisdiction may be offered employment in any of the positions listed in section a - c.

(f)

Final applicant(s) for the above-noted positions shall be required to provide any and all necessary personal identification in order that the Chief of Police or his designee, might cause a thorough search to be made of local and state criminal history records to determine if the applicant has a history involving criminal conviction for any of the crimes enumerated in the previous paragraphs of this ordinance. The Chief of Police, or his designee, shall cause a check for state criminal history records to be made of all final applicants for any of the enumerated positions including volunteer positions. The City shall pay the cost of such search of criminal records. The Chief of Police shall cause all records to be forwarded to the City Manager or his/her designee.

(g)

Final applicants for one of the named positions who have a criminal history involving a conviction for one of the crimes related to that position in this ordinance or a credit history that raises significant concerns regarding the fitness of the employee for employment, shall be provided the opportunity to challenge the accuracy of the information, or to provide evidence of mitigation. Having done so, the City Manager, or his/her designee, may, in his/her discretion, allow applicants with any misdemeanor criminal conviction other than those in section (a) above, or with any felony conviction where the last date of adjudication, incarceration, probation, or parole occurred over seven (7) years prior to the date of the job posting, to proceed in the hiring process. If the challenge is not approved or accepted, the applicant will be removed from further consideration of employment relative to the positions named in this ordinance.

(Ord. of 5-19-98, § 1; Ord. No. 0-2002-25, § 1, 5-7-02; Ord. No. 0-2004-94, 10-19-04; Ord. No. 0-2005-1, § 1, 1-4-05; Ord. No. 0-2007-42, § 1, 6-5-07)