

**CITY OF FRISCO PERSONNEL POLICIES**  
**SECTION: CRIMINAL BACKGROUND CHECK**

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**Subject:** CRIMINAL BACKGROUND CHECK

**Date:** 09/16/14

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**I. STATEMENT OF PURPOSE:**

The City will obtain credit history information on a candidate for employment only when the credit history is related to the position for which the person is being considered. The City shall comply with the Fair Credit Reporting Act before obtaining a job-related credit history.

The City will conduct a criminal history record review for a final candidate for employment and will determine through the individualized assessment procedures described below whether the individual should be excluded from employment.

The City will conduct a motor vehicle record review on a candidate for employment when driving is an essential job function of the position for which the person is being considered. The City will determine through the evaluation criteria for applicants, as set forth in its Motor Vehicle Operator Standards, whether the individual should be excluded from employment.

This policy applies to all employees, including all full-time and part-time employees, paid and unpaid interns, temporary employees, contract staff employees, and volunteers.

**II. PROCEDURES:**

**Consumer Credit Reports**

(a) "Adverse action" includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

(b) "Consumer report" includes any information from a consumer reporting agency that is used or expected to be used as a factor in establishing the person's eligibility for employment.

(c) "Consumer reporting agency" is an agency that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(d) “Employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a person for employment, promotion, reassignment, or retention as an employee.

*15 U.S.C. 1681a*

#### Obtaining Reports

The City may not procure a consumer report for employment purposes unless:

1. The City has provided the applicant or employee a written disclosure that a consumer report may be obtained for employment purposes; and
2. The applicant or employee has authorized in writing the procurement of the consumer report.

#### Adverse Action

Before taking any adverse action based on the consumer report, the City shall provide the applicant or employee a copy of the consumer report and a written description of the person’s rights under the Fair Credit Reporting Act, as prescribed by the Federal Trade Commission.

*15 U.S.C. 1681(b)(3)*

#### Notice of Address Discrepancy

“Notice of address discrepancy” means a notice sent to a user by a consumer reporting agency that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.

(a) When the City receives a notice of address discrepancy, it will compare the information in the consumer report provided by the consumer reporting agency with information the City maintains in its own records, such as applications, change of address notifications, and other personnel records. In addition, the City will verify the information in the consumer report provided by the consumer reporting agency with the consumer.

(b) If the City regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which it received the notice of address discrepancy, the City will furnish an address for the consumer, which the City has reasonably confirmed is accurate, to the consumer reporting agency. The City will reasonably confirm an address is accurate by verifying the address with the consumer about whom it has requested the report; reviewing its own records to verify the address of the consumer; or using other reasonable means.

*16 CFR 641.1*

#### Disposal of Records

The City must properly dispose of a consumer report by taking reasonable measures to protect against unauthorized access to or use of the information.

“Dispose” includes discarding or abandoning the consumer report, or selling, donating, or transferring any medium, including computer equipment, upon which the consumer report is stored.

Examples of reasonable measures include:

1. Burning, pulverizing, or shredding papers containing a consumer report so the information cannot practicably be read or reconstructed;
2. Destroying or erasing electronic media containing a consumer report so that the information cannot practicably be read or reconstructed; or
3. After due diligence, entering into and monitoring compliance with a contract with another party engaged in the business of record destruction to dispose of the consumer report.

16 CFR 682.3

#### Individualized Assessment

Only City employee(s) authorized to view criminal history records will be involved in conducting an individualized criminal history record review.

Consistent with business necessity, the City shall disqualify from employment a person whose criminal history is inconsistent with the job duties of the position for which the person is being considered.

The City shall perform an individualized assessment of criminal history record information when determining a person’s eligibility for employment in a specific position. The City shall take into account a variety of factors, including the following:

1. The nature of the offense;
2. The age of the person when the crime was committed;
3. The date of the offense and how much time has elapsed;
4. The adjudication of the offense (e.g., whether the person was found guilty by a trier of fact, pled guilty, entered a no contest plea, or received deferred adjudication);
5. The nature and responsibilities of the job sought;
6. The accuracy of the person’s disclosure of his or her criminal history during the selection process;
7. The effect of the conduct on the overall environment; and
8. Any further information provided by the person concerning his or her criminal history record.

In conducting the individualized assessment, the City will consider both the factors set out above and any additional information provided by the individual. The City may obtain court records, if needed, to validate the information provided.

Using the available information, the City will determine whether or not exclusion from employment is consistent with business necessity.

Failure to disclose criminal history on an employment application will exclude a candidate from employment with the City, regardless of whether the candidate's criminal history alone would have disqualified him or her for employment.

#### *Arrests*

The fact of an arrest alone does not establish that criminal conduct has occurred, and the City shall not disqualify a person based solely on an arrest. The City may make an employment decision based on the conduct underlying the arrest if the conduct makes the person unfit for the position in question.

#### *Notice to Candidate for Employment*

A candidate for employment who has a criminal history record will be notified in writing that he or she may be excluded from employment due to criminal history. The candidate will be given an opportunity to provide additional information concerning his or her criminal history record to be considered as part of the individualized assessment process.

Additional information may include:

- Documentation showing inaccuracies in the criminal record;
- Any evidence related to the factors for individualized assessment listed above;
- Evidence that he or she has performed the same type of work, since the incident(s) noted on the criminal history record, with no known incidents of criminal conduct;
- Rehabilitation efforts, including education and training;
- Employment or character references; and
- Whether or not he or she is bonded (if a bond is required for the job position with the City).

If the individual does not provide additional information in a timely manner, the City will proceed with an individualized determination with the information available to the City.

#### *Claim of Errors in the Record*

A candidate for employment who claims that the reported criminal history record is erroneous may be provided a copy of the record so that he or she can undertake efforts to correct the record.

#### Offenses for Which Exclusion is Likely

A record of certain offenses carries a high likelihood that the City will exclude the individual from employment. Subject to an individualized assessment, the following classes of offense will likely preclude employment with the City:

- Any offense for which employment of the individual places the safety of other employees at risk regardless of the date of the offense, its relation to the employee's job, or the age of the victim. Such offenses include: homicide, murder, capital murder, unlawful transport, false imprisonment, trafficking of persons, sexual assault, aggravated sexual assault, rape, child abuse, sale or purchase of a child, arson, robbery, aggravated robbery, prostitution or solicitation of prostitution, child pornography, and sexual solicitation of a child.
- Any offense that, because of the relationship between the offense and the duties and responsibilities of the position in question, creates a risk to the best interests of the City. For example, a person who has committed a property offense will not normally be eligible for a position with financial duties or responsibilities.
- Any felony conviction that occurred within the ten years prior to application for employment with the City.
- Any Class C misdemeanor conviction involving moral turpitude within the ten years prior to application for employment with the City.

### Adjudication of Offenses

#### *Conviction*

In considering the adjudication of the offense, the following standards apply.

The City will ordinarily treat a conviction as proof of guilt. A conviction record constitutes reliable evidence that a person engaged in the criminal conduct "beyond a reasonable doubt."

#### *Arrest*

An arrest record alone does not establish criminal conduct. Before the City makes an employment decision based on an arrest, the City will examine the circumstances surrounding the arrest and will make any necessary inquiries. The City is not required to conduct an extensive investigation to determine the individual's guilt or innocence but need only make inquiries that could shed light on the likelihood of the individual's guilt in committing the underlying offense.

An arrest will be treated as a conviction when inquiries suggest a high likelihood that the individual committed the underlying offense. Where such a determination is not found, the arrest will not be used to take an adverse employment action against the individual.

#### *Deferred Adjudication*

A grant of deferred adjudication resulting from a no contest or guilty plea will ordinarily be treated as an admission of guilt. However, the City will make inquiries similar to the inquiries made when an arrest is reported.

When such inquiries suggest a high likelihood that the individual committed the underlying offense, deferred adjudication will be treated as a conviction. Where such a determination is not found, deferred adjudication will not be used to take an adverse employment action against the individual.

#### *Not Guilty, Withdrawn, or Dismissed Charges*

For a not guilty, withdrawn, or dismissed adjudication, the individual will be asked to explain, in writing, the circumstances and must provide a certified copy of the court paperwork showing the final disposition of every charge. The City may make additional inquiries into the surrounding circumstances.

The charges will be treated as a conviction when such inquiries suggest a high likelihood that the individual committed the underlying offense. Where such a determination is not found, the criminal history in question will not be used to take an adverse employment action against the individual.

#### Types of Convictions

If the criminal history record shows a conviction, or if inquiries made during the record review indicate a high likelihood of guilt and/or recurrence, then the following employment restrictions will apply:

##### *Felony*

For a felony offense committed within the ten years before application for employment, see OFFENSES FOR WHICH EXCLUSION IS LIKELY, above.

If the individual committed a felony offense more than ten years before application for employment, the City will determine whether the conviction was for an offense that generally requires exclusion by law or by policy or, if not, whether the underlying offense relates to the duties and responsibilities of the desired position.

The following guidelines will apply:

- If the offense does not relate to the duties and responsibilities of the position, and was not for an offense that would otherwise preclude employment, the individual may be considered for employment or continued employment.
- If the offense does relate to the duties and responsibilities of the position, the City will consider the likelihood of recurrence of the criminal behavior. A determination that the behavior is unlikely to recur will result in the individual being eligible for employment; a finding to the contrary will result in the individual being ineligible for employment.

##### *Class B Misdemeanors*

An individual may be eligible for employment if the conviction for a Class A or Class B misdemeanor is not related to the duties and responsibilities of the position and/or has occurred more than five years prior.

If the conviction occurred in the past five years and does relate to the duties and responsibilities of the position, the employee is ineligible for employment in the City if it is determined there is a high degree of likelihood for the recurrence of the behavior.

#### *Class C Misdemeanors*

For a Class C misdemeanor offense involving moral turpitude committed within the ten years before application for employment, as applicable, see OFFENSES FOR WHICH EXCLUSION IS LIKELY, above.

If convicted of a Class C misdemeanor that does not involve moral turpitude or that occurred more than ten years prior, the City will determine whether the underlying offense relates to the duties and responsibilities of the desired position.

The following guidelines will apply:

- If the offense does not relate to the duties and responsibilities of the position, and was not for an offense that would otherwise preclude employment, the individual may be considered for employment.
- If the offense does relate to the duties and responsibilities of the position, the City will consider the likelihood of recurrence of the criminal behavior. A determination that the behavior is unlikely to recur will result in the individual being eligible for employment; a finding to the contrary will result in the individual being ineligible for employment.

#### *Multiple Offenses*

An individual with multiple offenses that individually do not make him or her ineligible for employment may be deemed ineligible for continued employment when repetitious criminal behavior indicates a high degree of likelihood for recurrence of the behavior.

#### *Unlisted Criminal History*

If a criminal history record does not list an event reported by the candidate for employment, he or she will be asked to explain, in writing, the circumstances for each reported incident. A certified copy of pertinent court paperwork showing final disposition of the charge must be included. The City may make additional inquiries.

#### *Applicants for Employment with Police and Fire Departments*

The standards of elimination of employment for Police Department and Fire Department positions may differ and may be established by departmental policy.

#### *Other Policies*

Applicants are subject to elimination under other City policies if the applicant's criminal history limits his or her ability to perform the essential functions of the position.