

Background Checks

Number: B-8

Revision: 06/14/2022

Revision Date: 07/01/2017

1.0 POLICY

This Town believes that employing and retaining a well-qualified, diverse workforce is essential to the overall success of the organization. Criminal background checks are an important tool in determining the suitability of an individual for either initial or continued employment with the Town.

2.0 PURPOSE

Information about an individual's past criminal conduct is collected to preserve public trust; promote a safe work environment for employees and members of the public; determine their suitability for employment; and promote the protection of Town property. The Town seeks to promote a fair, consistent, confidential and non-discriminatory method of obtaining and using criminal information for employment decisions.

3.0 SCOPE

This policy applies to all applicants and employees of the Town of Carolina Beach

4.0 DEFINITIONS

- 4.1 Applicant – A person who applies for a paid position with the Town or applies for a paid volunteer position within the Fire Department.
- 4.2 Background Check – Process of acquiring records related to an individual's past criminal conduct.
- 4.3 Background Check Release Form – A form completed by an applicant that authorizes a background check prior to employment.
- 4.4 Criminal History - A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's or employee's fitness for holding any paid position with the Town, or a volunteer Firefighter position within the Town. For applicants seeking employment in the Fire Department, the crimes include, but are not limited to, criminal offences as set forth in Section 3.(a) G.S. 143B-943 of the North Carolina General Statutes.
- 4.5 Fair Credit Reporting Act (FCRA) – Federal law that regulates the collection, dissemination and use of consumer credit information, including criminal background reports.
- 4.6 Legal Actions/Proceedings – Any legal actions including, but not limited to, arrests, convictions, guilty pleas, no contest pleas, restraining orders, warrants, and criminal charges.
- 4.7 Sensitive Position – A position where: 1) the employee's duties may impact the health and safety of themselves, other employees, and the public; 2) the employee's duties involve working with vulnerable populations such as children or seniors; or 3) the employee's duties involve handling cash or sensitive financial information.

5.0 ORGANIZATIONAL RULES

- 5.1 All applicants for employment are subject to a criminal background check.

- 5.2 Active employees serving in positions with certain responsibilities (e.g. law enforcement, financial operations, working with vulnerable populations), are subject to background checks every three (3) years during their employment.
- 5.3 An arrest, in and of itself, does not establish that criminal conduct has occurred. Accordingly, the fact that an individual was arrested should never be the sole basis of an adverse employment action, except as outlined below. The Town may take adverse employment action based on information showing the individual actually committed the conduct underlying the arrest. A Conviction, guilty plea or no contest plea shall serve as sufficient evidence that the individual engaged in the alleged criminal conduct.
- 5.4 If an applicant for a Fire Department position or a current Fire Department employee's verified criminal history record check reveals one or more convictions of a crime listed in Section 3.(a) G.S. 143B-943 of the North Carolina General Statutes, then the conviction constitutes just cause for not selecting the applicant for the position or for dismissing a current employee from a current position with the Fire Department. Except as provided in subsection (d1) of G.S. 143B-943, the conviction does not automatically prohibit volunteering or employment; however, the following factors shall be considered by the Town in determining whether the applicant shall be denied employment, or the current employee dismissed from current employment:
 - A. The level and seriousness of the crime
 - B. The date of the crime
 - C. The age of the person at the time of the conviction
 - D. The circumstances surrounding the commission of the crime, if known
 - E. The nexus between the criminal conduct of the person and the duties of the applicant
 - F. The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed
 - G. The subsequent commission by the person of a crime listed in subsection (a) of G.S. 143B-943 of the North Carolina General Statutes
- 5.5 An applicant is prohibited from serving in a paid or volunteer position with the Fire Department if the applicant's verified criminal history record check reveals a conviction of arson or other Article of Chapter 14 of the General Statutes. The Town shall request, and an applicant shall disclose, any pending felony charges involving burning or setting fire under Article 15, Article 22, or any other Article of Chapter 14 of the General Statutes of the State of North Carolina. Upon becoming aware of pending felony charges, through the required disclosure, or by other means, the Town shall not offer an applicant a paid or volunteer position, except as outlined below in 5.6.
- 5.6 The Town shall deny an applicant the position, and may dismiss a current employee, who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from a current position. The Town may extend a conditional offer of employment pending the (i) results of a criminal history record check required by this policy or (ii) final disposition of felony charges disclosed as required by this policy or otherwise discovered.

- 5.7 The Town shall not treat background check information differently for individuals based on their race, color, gender, religion, age, political affiliation, national origin, sexual orientation, physical or mental disability, genetic information or any other non-job-related factor.
- 5.8 The Town recognizes that the use of background check information may disproportionately impact some individuals based on their membership in a protected class. Accordingly, the Town will take steps to ensure that any use of background check information will be job related and consistent with business necessity and any applicable laws.

6.0 PROCEDURES

- 6.1 Pre-Employment Background Checks

The Human Resources Department will arrange for the background check once the hiring official extends a conditional offer of employment to the applicant. This offer could be verbal, or in writing. Any applicant refusing to authorize the background check once the applicant has been given a conditional offer of employment in writing will have their application rejected.

Departments such as the Police Department and the Fire Department may have pre-employment procedures for background checks that are more stringent than stated in this policy and may include conducting a background check prior to the extending of a conditional offer of employment. These departments will follow departmental procedures and standards as outlined in relevant General Statute, including the Fire Department's requirement to follow G.S. 143B-943 of the North Carolina General Statutes, and the Police Department's policy to follow the North Carolina Criminal Justice Training and Standards Division's template for background checks.

The Town shall ensure that background checks, regardless of what department performs the background check, are conducted and notices provided in accordance with the requirements of the FCRA.

If the background check does not reveal any prior criminal activity, the applicant may be hired pending the outcome of other pre-employment conditions. However, if the background check reveals a conviction, guilty or no contest plea, the hiring manager in concert with the Human Resource Director, shall determine the degree to which the criminal conduct is related to the position for which the applicant is being considered.

When determining whether to reject an applicant because of prior criminal activity, the following shall be considered:

- Nature and gravity of the criminal activity
- Time that has passed since the criminal activity
- Duties that the applicant will perform
- Applicant's opinion on the accuracy of the background check
- Facts surrounding the criminal activity
- Number of criminal offenses
- Age of the applicant at the time of the criminal activity
- Applicant's employment history before and after the criminal activity
- Applicant's rehabilitation efforts
- Applicant's employment or character references; and
- Applicant's participation in a bonding program.

If the decision is to reject the applicant because of their prior criminal activity, the Town shall comply with the requirements of the FCRA.

Pending charges, or prior convictions, that are potentially significant require consultation with the Town Manager prior to extending an employment offer.

Due to the nature of their positions with the Town, some active employees in sensitive positions may be subject to background checks every three (3) years of their employment. The Town Manager will approve a list of the sensitive positions that will be subject to periodic background checks.

Prior to conducting a background check on a current employee, the Department Head and Human Resources shall identify the criminal offenses that are job-related for the positions in question. Employees serving in the identified positions must provide their authorization by signing a background check release form. The failure to do so will subject the employee to corrective action up to and including dismissal from the Town. If the background check reveals a conviction, guilty or no-contest plea, the affected Department Head shall determine the degree to which the criminal conduct is related to the position. When contemplating corrective action, they shall consider the same factors outlined above.

- **6.2 Procedure for Active Employees**

All active employees who are subject to legal actions/proceedings shall provide the following information to their Department Head within two (2) business days of the initial incident:

- Name of the jurisdiction involved
- Location of the alleged activity
- Specific legal action
- Nature of the alleged activity
- Date and time of the legal action; and
- Dates of any upcoming court appearances

The Department Head must meet with Human Resources to determine the relevance, if any, of the employee's legal action(s). In reaching this decision they shall consider the same factors outlines in Section 6.1 above. Employees' legal actions may subject them to corrective action up to, and including dismissal from Town employment. Likewise, employees failing to notify their Supervisor of legal actions as required by the policy may be subject to correction action up to, and including dismissal from employment.

7.0 APPENDIX, APPENDICES

None