



19-0696

Standing Committee: Personnel Committee
Resolution to approve revised
Document Name: Background Check Policy

Consent

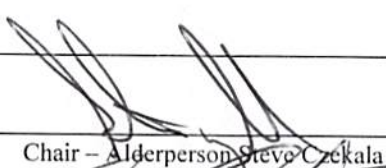
Non-Consent

Chairman Recommend

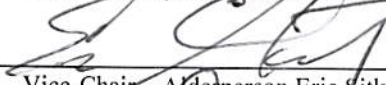
Recommendation:

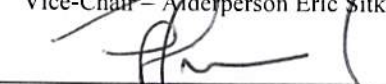
~~ACCEPT POLICY~~
Adopt resolution

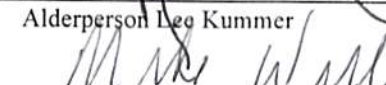
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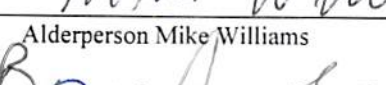

Chair - Alderperson Steve Czekala

01 Jul 19
Date

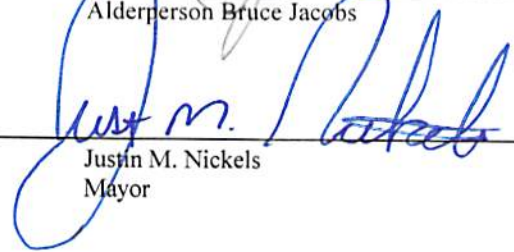

Vice-Chair - Alderperson Eric Sitkiewitz


Alderperson Leo Kummer


Alderperson Mike Williams


Alderperson Bruce Jacobs

Approved:


Justin M. Nickels
Mayor

7-16-19
Date

Personnel
7-15-19

RESOLUTION

REVISED BACKGROUND CHECK POLICY

WHEREAS, the City of Manitowoc believes that hiring the most qualified individuals to fill positions contributes to the overall success of the City; and

WHEREAS, it is in the City's best interest that all internal and external offers of employment be contingent upon clear results of thorough reference and background checks, to serve as an important part of the selection process as a means of promoting a safer and more productive work environment for current and future City employees; and

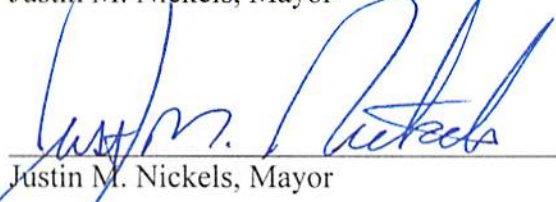
WHEREAS, the current Background Check Policy has been in place since January 2016 and there are areas of the policy that the HR Director has recommended be clarified to protect the City and meet our legal obligations under federal and state law; and

WHEREAS, the Personnel Committee recommended approval of the attached revised Background Check Policy at a meeting held on Monday, July 1, 2019, to be separate from the existing Employee Policy Manual.

NOW THEREFORE BE IT RESOLVED, by the Mayor and Common Council of the City of Manitowoc to approve the attached revised Background Check Policy, to be separate from the existing Employee Policy Manual, effective upon its passage.

INTRODUCED JUL 15 2019 ADOPTED JUL 15 2019

Justin M. Nickels, Mayor APPROVED 7-16-19


Justin M. Nickels, Mayor

This resolution was drafted by Kathleen M. McDaniel, City Attorney

Fiscal Impact: Neutral
Funding Source: N/A
Finance Director Approval: /SC
Approved as to form: /KM

CITY OF MANITOWOC BACKGROUND CHECK POLICY

Effective Date:	January 2016
Revision Date:	July 2019
Subject:	Background Checks
Distribution:	All Employees
No. of Pages:	7

PURPOSE

The City of Manitowoc believes that hiring qualified individuals to fill positions contributes to the overall success of the City. Reference and background checks serve as an important part of the selection process. This type of information is collected as a means of promoting a safer and more productive work environment for current and future City employees. Background checks also help the City obtain additional applicant related information that helps determine the applicant's overall employability and future conduct/performance, ensuring the protection of the current employees, citizens, property and information of the City.

All internal and external offers of employment at the City of Manitowoc are contingent upon clear results of a thorough background check. Background checks will be conducted on all external and internal candidates applying for a position requiring a background check, or as deemed necessary.

POLICY

The City Policy includes employment eligibility, verification of application information, reference checks, education verification, physical, drug, and psychological evaluation, criminal check, motor vehicle check, credit reports, employee record retention, background check policy and determination. Details regarding each area are outlined below.

A. Employment Eligibility

The City is required by law to check identity and authorization for employment in the United States. The U.S. Citizenship and Immigration Services (USCIS) provides the I-9 form for the City to utilize in documenting verification of employment eligibility. This must be verified by the examination of acceptable documents presented by the candidate for employment and completion of the I-9 form within three (3) business days. I-9 form will be completed by the Human Resources or Finance Department.

B. Verification of Application Information

The City may obtain references to confirm and supplement information in the resume or application. Additionally, the City may seek confirmation of background data (such as dates of employment, salary, position and duties, education, and professional licenses) and competency with respect to certain job-related skills (such as attendance, dependability, judgment and initiative).

C. Reference Checks

The City may conduct a reference check on prospective employees. A reference check provides the City an opportunity to obtain information from other sources about the candidate's work history, determine to what extent the work experience of the candidate is related to City/departmental needs, and to identify job related problem areas. A thorough reference check should be completed prior to making any offer of employment.

D. Education/Certification Verification

The City may verify all education and certification(s) an individual listed on the application. The verification assures the City that the selected applicant possesses all education credentials listed on the application or otherwise cited by the candidate that qualify the individual for the position sought. Verification of certain education and professional credentials is a necessity to ensure applicants meet the training/education and experience required for the position. The hiring department may elect to verify other information on the employment application forms. When an employee in a permanent or FTE position transfers from another City department, credentials that have been previously verified and documented in his/her personnel file may be exempted from re-verification.

E. Psychological Evaluations

All public safety positions (sworn Police & Protected Fire positions) shall complete a post-conditional offer psychological evaluation. The pre-employment psychological evaluation is a specialized examination of an applicant's psychological suitability for a position. A post-conditional offer psychological evaluation may be "medical" in nature and may produce evidence of a disqualifying mental health condition.

F. Physical and Drug Testing

All positions shall complete and pass a post-conditional offer physical and drug test. The pre-employment physical is an examination of an applicant's physical suitability for a position based on the job description. The doctor will assess if the candidate is a "pass." A post-conditional offer drug test is to determine the applicant's non-prescription drug use; a negative result, as determined by the MRO, will be considered "pass."

G. Criminal Background Checks

Applicants are required to respond to questions regarding convictions and pending criminal charges, if applicable, on the City's application form. Pending criminal charges and conviction history information may not be used against candidates for employment, unless the conviction or pending criminal charge substantially relates to the circumstances of the particular job (Wis. Statute 111.335). In reviewing applicable convictions and pending charges, the City will consider the relationship between the conviction and the position, the nature of the conviction, the number of convictions, rehabilitation efforts and the applicant's fitness for the job.

H. Driving Records

A review of driving records is required for all City positions that involve operation of a motor vehicle. Prior to an offer of employment or promotion to a position that requires driving, the City may review the records indicated below against a specific set of screening criteria to

evaluate whether the record is acceptable, questionable or unacceptable. In addition, the screening may also take into account how much experience is needed, and what types of vehicles and/or equipment the candidate used in the past.

CDL Operators will be requested to provide a ten year employment history as part of the application process (per Federal DOT standard 49 CFR), and must comply with the City Drug and Alcohol Free Workplace Policy and consent to testing as defined by the DOT and City policy.

A condition of employment for the City is that employees who operate motor vehicles or equipment have an acceptable driving record. Based on the City Motor Vehicle Record (MVR) review, a candidate will not be considered for employment if any of the following have occurred during the last three year period:

- i. Conviction of a felony which has nexus to the job position.
- ii. Cancellation, declination or non-renewal of vehicle insurance.
- iii. Suspension or revocation of driver's license.

I. Background Investigations

A detailed background investigation may be conducted for select positions, due to the sensitive nature or type of work performed. Generally, a background investigation attempts to gather information determined to be relevant to a candidate's performance of a job. For example, the Law Enforcement Standards Board describes the background investigation as a search of information relevant to the issue of whether the candidate possesses the following five (5) performance-related behavioral characteristics: dependability, honesty, judgment, social stability, and assertiveness. The background investigation goes beyond contacting individuals identified in a candidate's application as "references," and may include any one of the following: personal data, residence information, family relationships, personal references, education, military service, employment, financial history, civil/criminal litigation history, motor vehicle and driver's license history. The following City positions require background investigations as part of the selection process: Police Officer.

J. Credit Reports

City positions that have responsibility for initiating or affecting financial transactions will be required to submit to a credit check. These responsibilities may include, but are not limited to: collecting or handling cash or checks, writing checks or approving them, access to a direct money stream or being a fiduciary to the City. For any position where a consumer or credit check is required, the check will be conducted by a consumer reporting agency, and will be held in compliance with all federal and state statutes and collected consistent with the guidelines set forth by the Fair Credit Reporting Act (FCRA).

1. Prior to requesting the FCRA report, the City will notify the candidate or employee with a conspicuous written disclosure (in a document separate from the application) indicating a report will be requested and obtain their written authorization.
2. The City will provide certification to the consumer reporting agency that compliance with the FCRA and all other applicable equal employment opportunity laws and regulations will be adhered to.
3. Prior to taking any adverse action based on the report, a *pre-adverse action disclosure notice* will be provided to the candidate or employee that includes a copy of the individual's consumer report and a copy of the Federal Trade Commission's (FTC) document "A

Summary of Your Rights Under the Fair Credit Reporting Act”, which includes their ability to dispute inaccurate information. Once notified, the candidate or employee will be given the opportunity to correct or explain any information included in the report before the City takes the adverse action.

4. The City will provide written notification to the candidate or employee of the following:
 - i. The adverse action taken;
 - ii. The name, address and telephone number of the consumer reporting agency that furnished the consumer report;
 - iii. A statement that the consumer reporting agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it;
 - iv. A notice of the individual’s right to dispute the accuracy or completeness of any information the agency furnished, and their right to an additional free consumer report from the agency upon request within 60 days.

K. Recordkeeping

Information attained as part of the reference and background checks process will be used as part of the employment process and will be kept strictly confidential. The Human Resources Department will store and maintain the information obtained as part of a reference check. Any City employee who has authority to conduct a reference check should forward all pertinent documentation to the Human Resources Department. The Human Resources Department will only have access to this information, which will be kept separate from the employee’s personnel file.

L. Legal Restrictions

Reference checks must be conducted in compliance with anti-discrimination laws. Therefore, inquiry about an applicant’s race, color, sex (including pregnancy and sexual harassment), national origin, age, disability, religious observation or practice, ancestry, creed, handicap, marital status, arrest record, conviction record, sexual orientation, military service, use or nonuse of lawful products off the employer’s premises during non-working hours, unfair honesty testing, genetic testing or any other protected class under federal, state or local law is expressly prohibited.

The reference checking procedure should not question reference givers in a manner which elicits information specifying the candidate’s membership in a protected class. The only information that can be collected is that pertaining to the quality and quantity of work performed by the applicant, the applicant’s education, and other issues that impact the workplace. The City will make inquiries regarding criminal records during the pre-employment stage. However, in keeping with the Wisconsin Fair Employment Act, this information will not be used as a basis for denying employment, unless the circumstances of the conviction or pending criminal charge (arrest) substantially relate to the circumstances of the particular job applied for.

M. Providing References

Wisconsin law allows references to be given to prospective employers in good faith and protects employers from civil liability for reference provided in good faith. Per Wisconsin State Statute 895.487 (2) *“An employer who, on the request of an employee or a prospective employer of the employee, provides a reference to that prospective employer is presumed to be acting in good*

faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from all civil liability that may result from providing that reference. The presumption of good faith under this subsection may be rebutted only upon a showing by clear and convincing evidence that the employer knowingly provided false information in the reference, that the employer made the reference maliciously or that the employer made the reference in violation of s. 111.322”.

All inquiries regarding a current or former City employee must be referred to the Human Resources Department, including telephone and written requests. Information provided over the telephone will be limited to verification of employment dates, position title, and salary. Reference letters are prohibited from being issued on any current or former City employee, without prior permission from the Human Resources Department.

No other data or information regarding any current or former City employee, or their employment with the City, will be furnished unless the employee authorizes the City to furnish this information in writing that also releases the City from liability in connection with the furnishing of this information or the City is required by law to furnish information.

N. Positions Requiring Background Checks

The following checks will be completed for employees and prospective employees based on the job. This is not an exhaustive list and Human Resources will use discretion and do checks as necessary based on job duties and responsibilities.

Position	Types of Background Check
Administrative Staff	Criminal
DPI Admin	Criminal
DPI Non-Admin (Streets, Parks, Cemetery)	Criminal, MVR
Engineering Staff	Criminal, MVR
Finance/Treasury Staff	Criminal, Credit
Firefighter	Criminal, MVR
Inspection Staff	Criminal, MVR
Library Staff	Criminal
Library Maintenance	Criminal, MVR
Library Cash Handling	Criminal, Credit
Police Sworn Officers	Criminal, MVR, Credit, Background Investigation
Recreational Division Manager	Criminal, Credit, MVR
Seasonal Staff (non CDL)	Criminal
Seasonal Staff (CDL)	Criminal, MVR
Supervisors/Managers	Criminal, MVR
Transit Drivers – CDL	Criminal, MVR
WWTF Operator	Criminal, MVR
Volunteers – Police	Criminal, MVR
Volunteers - Non-Police	Criminal, MVR
Elected Officials	None

BACKGROUND CHECK PROCEDURE

After a verbal employment or promotion offer is made, the necessary checks will be performed on the chosen candidate that is being hired or promoted. Human Resources will review all results and consult with the City Attorney for any item that may need thorough review or investigation. The candidate is not to begin work prior to the hiring manager receiving approval from Human Resources.

Human Resources will notify the hiring manager regarding the results of the check. The offer of employment is contingent upon PASSING the background check. In instances where the candidate FAILS the background check, the offer will be rescinded. The candidate may apply for other positions that do not require passing a background check for a new position they are applying for.

Background check information will be maintained in a separate file and kept confidential. Background checks will be assessed for current City employees every five years. If any information changes within five years, the employee may need to be transferred into a position that does not require passing of a background check for a new position they are applying for.

BACKGROUND CHECK DETERMINATION

The chart below defines the determination of a “failed” background check and the look-back time period. All employee background checks will be re-evaluated every five-eight years of employment or as the employee moves into another position that requires an updated background check.

Type of Background Check	Criteria that <u>may</u> result in a “FAIL” Background Check – all final determinations will be at the discretion of Human Resources and City Attorney
Credit	For positions that require a credit check:
	<ul style="list-style-type: none"> • Three or more incidents at 90 days late
	<ul style="list-style-type: none"> • Percent utilization of revolving debt 90% +
	<ul style="list-style-type: none"> • Bankruptcy filed 5 or less years ago
Criminal	<ul style="list-style-type: none"> • One or more collections (other than Medical) 5 or less years ago
	For positions that require a criminal check:
	<ul style="list-style-type: none"> • Felony
	<ul style="list-style-type: none"> • Bank Fraud
	<ul style="list-style-type: none"> • Child Abuse <10 years ago*
	<ul style="list-style-type: none"> • Active warrants out for arrest
	For positions that work with children:
	<ul style="list-style-type: none"> • Child Abuse <50 years ago*
<ul style="list-style-type: none"> • Sexual Assault/Predator <50 years ago* 	
MVR	For positions that work with elderly:
	<ul style="list-style-type: none"> • Domestic Abuse <10 years ago*
	For positions that work with animals:
	<ul style="list-style-type: none"> • Animal Abuse <10 years ago*
MVR	For positions that require a valid driver’s license or CDL, the following violations may impact whether a candidate obtains employment with the City:
	<ul style="list-style-type: none"> • OWI < 5 years ago*
	<ul style="list-style-type: none"> • Accident with fatality < 5 years ago*
	<ul style="list-style-type: none"> • No valid license or expired license
	<ul style="list-style-type: none"> • License revoked
	<ul style="list-style-type: none"> • 1+ Type A Violation(s) < 3 year ago*

	<ul style="list-style-type: none"> • 2+ Type B Violations < 3 year ago*
	<ul style="list-style-type: none"> • 3+ Type C Violations < 3 year ago*
	<ul style="list-style-type: none"> • 1 Type B and 2 Type C Violations < 3 year ago*

*based upon conviction date, not crime date.

MVR Definitions

Type A Violations: Includes, but is not limited to: driving with a revoked or suspended license, DWI, reckless driving, fleeing or evading police, resisting arrest, hit and run, failure to report an accident, involuntary manslaughter or negligent homicide using a motor vehicle, operating a motor vehicle for the commission of a felony, excessive speeding (15 mph above the posted speed limit), and drag racing.

Type B Violations: All at fault vehicle accidents.

Type C Violations: Includes all moving violations not classified as Type A or B: speeding, improper lane change, failure to yield, failure to obey a traffic signal or sign, and careless driving.

Note: CDL Operators will be requested to provide a ten year employment history as part of the application process (per Federal DOT standard 49 CFR), and must comply with the City Drug and Alcohol Free Workplace Policy and consent to testing as defined by the DOT and City policy.