



## **ARTICLE XXVIII**

### **CRIMINAL BACKGROUND CHECK POLICY AND CRIMINAL CHARGES/CONVICTIONS REPORTING PROCEDURES**

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#### **I. POLICY:**

Many jobs held by Town of Selma employees are identified as security sensitive. Employees in these positions affect the health of others, the safety of others, and/or evoke a high degree of trust and confidence.

The Town of Selma seeks to hire qualified individuals to limit its risk of hiring unsuitable employees and to safeguard its assets, current employees, and the public.

#### **II. PURPOSE:**

This Policy will assist in reaching that goal by requiring that all volunteers and final candidates for employment are subject to pre-employment background checks and will require that current employees be checked as outlined and be required to report any criminal charges and convictions.

#### **III. PROVISIONS:**

It shall be the Human Resources Director's responsibility to obtain and evaluate all background checks within the guidelines described in this Policy. The Town Manager will be the final authority on all volunteers/candidates/employees disqualified as a result of a background check.

- 1) The Town of Selma's job opportunity advertisement will include a statement that a background check is required on all volunteers and final candidates upon a conditional offer of employment with the Town of Selma.
- 2) The Human Resources Director is responsible for determining the job duties for which an additional background check is conducted and is responsible for ensuring there is a job-related need for conducting the additional checks.

Background checks will be conducted on all new volunteers and all final job candidates who have been extended a "Conditional Offer of Employment" for any position with the Town of

Selma and on current employees as stipulated. Volunteers for Town committees and elected officials will be excluded from this Policy.

- 1) The North Carolina Department of Justice sets the qualifications for the employment and retention of police officers including but not limited to standards addressing the minimum age, education, physical standards and mental status, citizenship, and moral character (N.C.G.S. §17C-10). In addition, Chapter 12 of the North Carolina Administrative Code controls the extent, scope and use of a background investigation and further places specific eligibility limitations on an applicant's prior criminal and motor vehicle history. In the event that one of the mandatory State standards conflicts with this Policy, the State standard shall control and shall be followed by that of the Town of Selma and the Selma Police Department.
- 2) This Policy shall provide for fair and unbiased treatment regardless of gender, race, color, disability, national origin, marital status, religion, or other protected class. Background checks will be conducted in compliance with all Federal and State statutes to include the Fair Credit Reporting Act (FCRA), American Disabilities Act (ADA), and the Municipal Records Retention Schedule. This Policy will be consistent with the guidelines requiring organizations to obtain a volunteer's/candidate's/employee's written authorization before conducting a background check, to properly notify the volunteer/candidate/employee of the results, and to store and/or dispose of the information derived from such reports.
- 3) The Town of Selma will ensure that all information obtained from the background check process will only be used as part of the employment process and kept strictly confidential according to the FCRA. Those having knowledge of the specific results will be limited to the volunteer/candidate/employee, the Human Resources Director, and the Town Manager.

#### **IV. SCOPE**

##### **Volunteers and Final Candidates**

The Town of Selma requires a background check for all full-time, part-time, temporary, intern, or volunteer applicants at the point of a conditional offer of employment being extended.

Prior to conducting the pre-employment background check the following must be presented to and completed by the volunteer or final candidate:

- 1) Application to Volunteer or a Town of Selma Employment Application with all signature lines completed.
- 2) Applicant's Authorization and Consent for Release of Information Form.

- 3) The Summary of Rights under the Fair Credit Reporting Act and Consumer Notification.

The Town staff has been authorized to conduct some types of background checks. All other background checks will be conducted by an approved vendor under contract with the Town of Selma and results provided within a reasonable timeframe.

Confirmation that the candidate has the degree or educational level as stated on their résumé or application may be conducted through the approved background checking vendor or the candidate may be required to submit an official transcript. Official transcripts must be received in a sealed envelope from the college, university or school system in question and must be a certified copy.

***The information that will be collected as part of the final candidate's background check*** will include an employment history check, social security verification, education verification, and a criminal conviction records check.

- 1) Extended background investigations will be conducted for candidates who are to be in jobs where Town funds are handled, where the employee will have access to credit card account numbers, and when they will have significant supervisory and management duties. These extended background checks include a credit report investigation in addition to those of a final candidate check.
- 2) Candidates for employment whose job duties will require them to drive Town vehicles or drive as part of their employment will be subject to a motor vehicle records check in addition to those of a final candidate check.
- 3) Candidates for employment when the job duties include entering a private household, interaction with children, or other related duties will be subject to a national sexual offender registry check in addition to the other checks required.

***The information that will be collected as part of a Recreation volunteer's background check*** will include a criminal conviction records check, national sex offender registry check, and a motor vehicle records check if they will be required to drive Town vehicles.

***The information that will be collected as part of a Volunteer Fireman's background check*** will include a criminal conviction records check and a motor vehicle records check.

Upon receipt of the results of the background check, the Human Resources Manager determines whether the volunteer/candidate is to be qualified or disqualified for employment. The Town Manager will be the final authority on disqualifying all volunteers/candidates/employees.

If a volunteer or candidate is found at any point of the hiring process to have deliberately withheld information with the intent to mislead or is found to have falsified information pertaining to previous convictions, education, employment history, or any information deemed pertinent to employment, the applicant will be disqualified from further employment consideration in any position with the Town due to falsification of an employment application; or if this is discovered post-employment, the employee will be terminated.

Other adverse results of the background check will not be used as a basis for denying employment unless the denial of employment is determined to be due to job-related issues or business necessity. The factors to be considered in determining whether to hire the volunteer or candidate whose background check reveals adverse results are the nature, severity, and intentionality of the offense(s) including but not limited to:

- 1) Statutory elements of the offense (rather than the individual's account of the facts of the offense);
- 2) Age at the time of the offense(s);
- 3) Number and type of offenses (felony, misdemeanor, traffic, other);
- 4) Time elapsed since the last offense.
- 5) Probation or parole status.
- 6) Whether the circumstances arose out of an employment situation.
- 7) If there is a pattern of offenses; and
- 8) Whether hiring the volunteer/candidate would pose a risk to the Town.

Additionally, the duties, responsibilities and circumstances of the position applied for including but not limited to would also be considered:

- 1) The nature and scope of the position, including key access to residential facilities or other facilities, access to cash, access to vulnerable populations including minor children.
- 2) The nature and scope of the position's contact with children, the public or other interpersonal contact.
- 3) The nature and scope of the position's autonomy and discretionary authority.
- 4) The amount and type of supervision received in the position or provided to subordinate staff.

- 5) The sensitive nature of the data or records maintained or to which the position has access.
- 6) The extent to which the position holds a measure of fiscal responsibility.
- 7) The opportunity presented for committing additional offenses; and
- 8) The extent to which acceptable job performance requires the trust and confidence of the Town or the public.

Professional discretion and consistent application will be used to ensure that only job-related or business necessity disqualifications occur (i.e., a fraud or embezzlement conviction of a finance employee, applicant, a sexual harassment judgment against a supervisory candidate).

Before taking an adverse action that is based in whole or in part on the information collected as part of the pre-employment background check, the volunteer or candidate must be notified and informed of the adverse results of the check.

In the event that disqualifying information is revealed during the background check process, applicants shall be notified in writing by certified mail that the conditional offer of employment is being withdrawn. Applicants shall have the right to appeal the disqualifying decision to the Town Manager in writing within five (5) business days from the date of receipt of the rejection notification letter.

### **Current Employees**

Employees of the Town of Selma who are promoted or transferred to other positions within Town employment, who were not already subject to the extended background check provisions of this Policy, shall be required to have an extended background check prior to moving into the position if the position is identified as a security sensitive position as defined in Chapter 1, Section 2 of this Appendix A.

The Town shall have the right to conduct a background check on any current employee for reasonable suspicion or cause and to conduct annual motor vehicle records checks on employees who drive Town vehicles or are required to drive as part of his or her employment. Employees will be notified in writing of the convictions/charges found in a background check.

### **Criminal Charges/Convictions Reporting Procedures**

All employees, beginning on the effective date of this Policy, are required to report any criminal or civil charge or conviction to the Human Resources Manager or the Town

Manager by the end of the following business day of the charge or conviction, not to exceed 48 hours. A written statement will be taken from the employee.

Charges/Convictions to be reported include but are not limited to:

- 1) Detention.
- 2) Criminal summons.
- 3) Civil summons.
- 4) Expired driver's license.
- 5) Warrant for arrest.
- 6) Order for arrest; and/or
- 7) Traffic violations, excluding minor citations

Charges/Convictions shall be evaluated in terms of the nature of the essential job functions versus the charge/conviction to determine disciplinary action or continued employment as defined in Chapter 3, Section 1 of this Appendix A.

### **Non-Compliance Penalties and Appeals**

Employees failing to submit to a background check for reasonable suspicion or cause, yearly motor vehicle records checks, if applicable, or failure to report charges or convictions shall receive disciplinary action up to and including termination from employment.

Employees shall have the right to appeal any disciplinary action or employment decisions related to convictions/charges using the guidelines set forth in the Town of Selma's Personnel Policy, Grievance Procedures.

### **V. RECORDKEEPING:**

#### **Maintenance of Records**

Evidence that a background check was conducted, the date and type of check, and a sufficient record of a disqualifying outcome will be maintained. A copy of the disqualification notification to the volunteer or candidate, and the background check record will be sealed and retained in the position vacancy file.

Evidence of a background check that results in an applicant being approved for hire and current employee checks will be filed separately from the employee's personnel file.

Background check information that includes infractions and other personal information will not be retained beyond its usefulness unless a specific need for the record exists and will be kept and disposed of in accordance with the guidelines stated in the guidelines of this Policy.

## **VI. DEFINITIONS:**

**Security Sensitive Positions.** Positions having significant supervisory and management duties; access to credit card numbers, checks or currency; having keys to sensitive work areas where security could be compromised; having access to computer data files that could result in alteration, deletion or unauthorized access to sensitive information; having access to health information or other confidential records of employees or customers; requiring the operation of Town vehicles and/or equipment; and being responsible for the care and instruction of children.

**Fair Credit Reporting Act (FCRA).** Federal regulations pertaining to the collection and use of information contained in consumer reports prepared and assembled by a consumer reporting agency.

**American Disabilities Act (ADA).** A civil rights law guaranteeing an equal opportunity of jobs for qualified individuals with disabilities.

**Municipal Records Retention and Disposition Schedule.** A records schedule that identifies and provides retention and disposition instructions for many records that have been identified as being produced and maintained in municipal administrative offices. These records are defined under Chapter 132 of the N.C. General Statutes. Chapter 121-5 mandates that these records be disposed of only in accordance with an official records retention schedule. Standard 13 of the Municipal Records Retention and Disposition Schedule addresses personnel records to include application and selection of files.

**Criminal Conviction Record.** The record of an individual's criminal conviction(s) obtained from the states and counties where the applicant lives or has lived in the past seven (7) years.

**Motor Vehicle Records (MVR).** An individual's driving history obtained from the North Carolina Department of Motor Vehicles or the state where the applicant's/employee's driver's license is or was issued or through licensed agencies to obtain these reports on the Town's behalf.

**Educational Verification.** Confirmation that the final candidate has the degree or educational level as stated on the application or résumé.

**Employment History Check.** A basic profile from a past work experience reference provided by the applicant, generally consisting of title, basic responsibilities, relationship, professional skills, and interpersonal skills.

**Sexual Offender Registry.** A report containing all information available in the applicant's state data repository.

**Social Security Verification.** A report verifying the issue date of the Social Security Number; if the Social Security Number has been reported deceased or has not yet been issued; other names used by the applicant, such as maiden names or aliases; and addresses listed by subject when he or she has applied for credit.

**Credit History.** A profile of the applicant's credit history for the last seven (7) years as reported by a major credit bureau to include charge-offs, collection accounts, public records, trade lines, bankruptcies, judgments, and monthly payment histories.

Policy adopted by Selma Town Council

Effective Date: July 10, 2018

*As of August 10, 2021, this policy replaces and supersedes any previous policies, or unwritten policies or practices covering the same subject.*