

THE CITY OF AIKEN

Memorandum

Date: 13 Jul 2020
To: City Council
From: Stuart T. Bedenbaugh, City Manager
Subject: A Resolution Supporting Changes to the City's Application Process.

Recently, Mayor Osbon and I met with representatives from the NAACP and Just Leadership USA to discuss the fair hiring practices, specifically “ban the box.” This is a hiring practice that eliminates on the initial job application, the question(s) that asks for criminal history.

The process still calls for a background check that includes criminal history, but this is done later in the application process, usually after a conditional offer is made to an applicant. We have attached a resolution for Council consideration to support this effort.

For Council consideration is a resolution to support changes to the City’s application process.



Stuart T. Bedenbaugh
City Manager

RESOLUTION

**A RESOLUTION SUPPORTING CHANGES TO THE CITY'S EMPLOYMENT
APPLICATION PROCESS**

WHEREAS, "Ban the Box" is a campaign by advocates for ex-offenders aimed at removing the check box on employment applications that asks if applicants have a criminal record; and

WHEREAS, the ability of people with criminal records to successfully reintegrate into their communities contributes to reduced recidivism, strengthens families, and leads to safer communities; and

WHEREAS, many people with criminal records in the City of Aiken are likely to be unemployed or underemployed; and

WHEREAS, the City of Aiken seeks to assist the rehabilitation of people with criminal records and ensure healthier, safer communities; and

WHEREAS, states and cities across the country have adopted fair chance hiring policies to remove unfair barriers to employment of people with criminal records; and

WHEREAS, the U.S. Equal Employment Opportunity Commission, to maximize compliance with federal anti-discrimination law, recommends delaying inquiry of a job applicant's conviction history and considering the job relatedness of the conviction taking into account the length of time since conviction, and providing an individualized assessment affording the opportunity to correct any inaccuracies and to submit evidence of mitigation or rehabilitation; and

WHEREAS, the Council of the City of Aiken has concluded that changing the hiring practices of the City of Aiken is essential to the general health, safety, welfare and economic stability of the City and is in the best interest of its citizens.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Aiken supports the City of Aiken's amendment to the City's employment application process as set forth hereinbelow.

Section 1: The purpose of this article is to ensure that the hiring practices of the City of Aiken do not unfairly deny people with arrest and conviction records employment and to further encourage rehabilitation of people with records to strengthen communities.

Section 2: The City shall consider an applicant's conviction history in employment decisions as follows:

- a. Posting job announcements. All job announcements and position descriptions shall contain the following information if the position requires a criminal background check, unless otherwise required by law: "This position is subject to a criminal background check for any convictions directly related to its duties and

- responsibilities. Only job-related convictions will be considered and will not automatically disqualify the candidate."
- b. Job applications. Job applications shall not inquire into an applicant's conviction history.
 - c. Notice of rights. Prior to any conviction history check, the City shall send the applicant a conditional offer letter, notice of rights under this resolution, and a request for authorization to conduct a criminal background check, if so required.
 - d. Limitation to conviction history. The City shall not use or access the following criminal records in relation to a criminal background check: records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, misdemeanor convictions where no jail sentence can be imposed, and infractions.
 - e. Conviction history inquiry. The City shall not inquire into or consider an applicant's conviction history until after the applicant has received a conditional offer. This requirement will not supersede any national accreditation standards or policies. If the City is considering the conviction history of the applicant, the City shall consider job-related convictions only. If a statute explicitly requires that certain convictions are automatic bars to employment, then those convictions shall be considered as well. Otherwise, no person shall be disqualified from employment, solely or in part because of a prior conviction, unless it is a job-related conviction. In determining if a conviction is job-related, the City shall consider:
 - 1. Whether the conviction is directly related to the duties and responsibilities of that employment position;
 - 2. Whether the position offers the opportunity for the same or a similar offense to occur;
 - 3. Whether circumstances leading to the conduct for which the person was convicted will recur in the position; and
 - 4. The length of time since the offense occurred.
 - f. Pre-adverse action notice. If an applicant's conviction history contains information that may be the basis for an adverse action, the City shall:
 - 1. Identify the conviction item(s) that are the basis for the potential adverse action;
 - 2. Provide a copy of the conviction history report, if any when authorized for release;
 - 3. Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide; and,
 - 4. Provide the applicant with an individualized assessment as described below.
 - g. Individualized assessment. A job-related conviction shall not be the basis for an adverse action if the applicant can show evidence of mitigation or rehabilitation and present fitness to perform the duties of the position sought. The applicant shall have five (5) business days, after issuance of the notice, to respond with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation or rehabilitation evidence. The City shall hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the applicant and the factors recommended by the U.S. Equal Employment Opportunity Commission.

- h. Evidence of mitigation or rehabilitation. Evidence of mitigation or rehabilitation may be established by:
 - 1. Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime and evidence showing compliance with terms and conditions of probation or parole; or
 - 2. Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.
- i. Final notice. If the City makes an adverse decision the applicant shall be informed of the final decision and that he or she may be eligible for other positions.
- j. Confidentiality. Any information pertaining to an applicant's background check obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed, or disseminated by the City or any of its agencies, or its vendors, to any other entity, except as required by law.
- k. Records. The City shall retain application forms, records of employment, and other pertinent data and records required under this chapter, including but not limited to, communication with the applicant, for a minimum of three years, and shall allow access to such records to appropriate entities if a dispute shall arise regarding the provisions of this chapter.
- l. Data Collection. The City shall maintain a record of the number of positions requiring criminal background checks and for those positions, shall maintain a record of the number of applicants and the number of applicants who were provided a conditional offer. In addition, the City shall maintain a record of the number of applicants with a record for a position:
 - 1. who were provided a pre-adverse action notice;
 - 2. who provided evidence of mitigation or rehabilitation;
 - 3. who were provided a final adverse notice; and
 - 4. who were hired.

ADOPTED by the Council of the City of Aiken at regular meeting held this ____ day of _____, 2020, at which a quorum was present and voting.

MAYOR

APPROVED:

ATTEST:

CITY ATTORNEY

CITY CLERK