

### 3.11 CRIMINAL CONVICTION CHECKS

#### **Criminal Conviction History Checks**

~~In order to protect its interest and the well being of its employees and the public, the City of Portland Auditor's Office will check conduct criminal conviction records checks prior to a final offer of employment on those candidates selected for all positions. This may include promotions and transfers to certain positions as well. The criminal conviction check is intended to identify persons who have demonstrated unsafe, threatening or illegal behaviors and assess their fitness for complying with job requirements.~~

A criminal conviction check will also be conducted for individuals who have disclosed potentially job-related convictions during the interview, or who have been reported as potentially having job-related convictions by previous employers during the course of employment verification or reference check.

Individuals who do not disclose all required convictions when requested may be denied employment for falsification of the application, ~~or, if the omissions are~~ discovered after employment, employees may be subject to discipline up to and including termination.

All ~~City Auditor's Office~~ employees are required to notify their supervisor of an arrest or conviction of any crime while employed by the Auditor's Office that impairs the ability of the employee to perform their work duties and responsibilities.

#### **Arrest Records May Affect Hiring Decisions for Some Employees**

Candidates for positions that involve conducting or supporting investigations of alleged police misconduct may be denied a position based on arrest records as well as criminal conviction records. Except for these positions, the Auditor's Office will only consider conviction records in determining suitability for employment.

Hiring managers will make decisions about hiring a candidate with an arrest record in consultation with legal counsel. Any denial of employment based on an arrest record must have the written approval of the City Auditor.

#### **Reviewing Conviction Records**

~~Restrictions in this rule do not apply to the City's public safety bureaus and those bureaus who support public safety bureaus and need to access their physical space or support their computer systems. Candidates for positions that involve the handling of funds conducting or supporting investigations of alleged police misconduct and/or require working with children or unsupervised in areas where children are likely to be present, may be denied a position because of arrests. Except under the circumstances outlined above, hiring authorities in bureaus other than public safety bureaus are~~ Except in these situations, the Auditor's Office is only allowed to consider convictions. Prior to deciding not to hire a candidate based on an arrest record, non-public safety bureaus the Auditor's Office must first consult with the City Attorney's Office legal counsel. Possessing a criminal conviction will not necessarily bar an employee from hire with the City of Portland Auditor's Office. Hiring managers authorities shall ensure that any decision not to hire, promote or transfer

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~~because of due to~~ a criminal conviction is job-related and consistent with business necessity. When reviewing a conviction record, the hiring ~~authority~~ manager shall:

1. evaluate the nature, gravity and frequency of the offense;
2. consider the duties of the position the employee holds or is applying for;
3. consider the age of the individual at the time of conviction;
4. consider the time that has passed since the conviction;
5. consider rehabilitation, if any;
6. evaluate the employee's entire work record or the applicant's work qualifications in total rather than only one aspect of ~~the~~ individual's history.

An applicant who is still on probation or parole may be denied employment based on ~~their status and the evaluation of circumstances above facts above facts~~. If a pre-employment arrest becomes a conviction after hire, it will be evaluated by the hiring ~~authority~~ manager in consultation with the City Auditor.

Any denial of employment based on a criminal conviction record must have the written approval of the City Auditor.

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## Expunged Record

If an applicant's criminal history has been expunged by a court order, it cannot be used to deny employment. An applicant who denies having a conviction record on an application form also cannot be later terminated for misrepresentation if the record has been legally expunged.

~~State law allows the removal of a person's juvenile record after a hearing by the juvenile court. Records expunged in this manner may not be used to disqualify an individual from an employment opportunity. Once any expunction order has been issued, the individual's record must be treated as if it never existed. An applicant who denies having a conviction record on an application form cannot be denied an appointment or later terminated for misrepresentation if the record has been legally expunged.~~

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## Procedure

Criminal conviction checks are the responsibility of the ~~hiring authority~~ hiring manager, in consultation with Management Services. Management Services is responsible for paying. ~~The hiring bureau is responsible for~~ the cost of obtaining the criminal conviction check. If an outside agency conducts the ~~criminal records~~ check, it must comply with the Fair Credit Reporting Act (FCRA). Consult with the City Attorney's Office concerning the FCRA requirements.

~~For positions requiring a criminal conviction check, t~~The final top candidate will be instructed to complete the Criminal Records Check Request Form authorizing the ~~Auditor's Office~~ City of Portland to conduct the conviction record check. The hiring ~~authority~~ manager will review the conviction record to determine job relatedness, using the factors listed above.

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## Employment Contingent on Results

Criminal conviction checks should be completed after a preliminary offer to the selected candidate and any offer must be conditional depending on the results of the conviction check.

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**Background Investigations**

Applicants for ~~certain~~ Auditor's Office positions that have direct access to sensitive law enforcement data will be subject to a background investigation that reviews an applicant's criminal history as well as other relevant information concerning the applicant's fitness for the particular position. See **Administrative Rule on Background Investigations**.

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**Administrative Rule  
History**

~~Adopted by Council March 6, 2002, Ordinance No. 176302~~  
~~Effective April 5, 2002~~  
~~Revised October 15, 2002~~  
~~Revised July 28, 2003~~  
~~Revised November 4, 2011~~  
~~Revised December 4, 2013~~  
~~Revised April 25, 2016~~

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