



## Pre-Employment Screening Policy

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Adopted by City Council **July 26, 2016**

## TABLE OF CONTENTS

SECTION 1	PURPOSE.....	3
SECTION 2	SCOPE.....	3
SECTION 3	EMPLOYMENT REFERENCES.....	3
SECTION 4	CRIMINAL HISTORY .....	4
SECTION 5	FAIR CREDIT REPORTING ACT (FCRA).....	4
SECTION 6	STATUTORY LIMITATIONS .....	5

## **SECTION 1      PURPOSE**

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Hiring incompetent, unqualified or disruptive employees exposes the City of Gunnison to loss of productivity, morale issues, administrative costs, and potential liability. The City of Gunnison can minimize these risks by conducting thorough pre-employment screening.

## **SECTION 2      SCOPE**

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This policy applies to the hiring of all employees. Screening can include employment references, criminal history, background and credit reports.

The City must have a clear “business necessity” before excluding applicants with poor credit, arrest records or criminal convictions. A business necessity is a legitimate business purpose that justifies a hiring decision as effective and needed to optimally achieve the City of Gunnison’s goals and ensure that operations run safely and efficiently.

Care is needed to avoid improperly obtaining information relating to applicants’ disabilities, protected class status, genetic and medical information.

If you have questions regarding these matters, consult with Human Resources. Some screening may first require a Disclosure and Authorization Form be completed by the applicant. Some screening questions may only be legally asked after the applicant has been given a conditional job offer.

## **SECTION 3      EMPLOYMENT REFERENCES**

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- A. The City of Gunnison must conduct reference checks to assist with employment decisions. Employment references are important to evaluate applicants’ experience and capabilities. These should be thorough and documented but avoid subjects unnecessary for performance of the actual job.
- B. The City will limit reference inquiries to job-related questions, avoiding questions which are improper under federal or state pre-employment inquiry guidelines.
- C. The City should ask former employers if they have any reason to doubt the applicant’s reliability and trustworthiness and inquire as to whether they are aware of any documented and substantiated violent, criminal, or harassing conduct by the applicant. They must ask about the applicant’s skills, performance, working with others including the public, compliance with employer policies, etc.
- D. The City shall maintain documentation on all information received from references as well as unsuccessful attempts to obtain information. The date of reference, the

person conducting the reference, the name and position of the person talked to, and his or her working relationship to the applicant will be documented.

## **SECTION 4 CRIMINAL HISTORY**

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### A. Arrests

- (1) Arrests are not proof that criminal conduct has occurred. The Equal Employment Opportunity Commission (EEOC) states that disqualifying applicants based on arrest records can have a disproportionate impact on applicants based on a protected class and, thus, violate civil rights laws.
- (2) The City of Gunnison shall not base employment decisions on arrests.
- (3) Since the mere request for arrest information tends to discourage applicants in protected classes, the City of Gunnison will not ask questions about arrests.
- (4) The City of Gunnison is aware the State of Colorado may seal records of arrests not resulting in convictions. The City of Gunnison will not ask questions about sealed records.

### B. Convictions

- (1) Unlike arrests, convictions are considered proof that criminal conduct has occurred. Any decision to refuse to hire an applicant based on criminal history, including misdemeanor and felony convictions, will focus on the nature of the crime and on crimes which have a direct relationship to the job duties of the position the applicant is pursuing. An adverse hiring decision will be communicated to the applicant and filed with the applicant's application.
- (2) The City of Gunnison shall consider at least the nature of the crime, the seriousness of the crime, the time elapsed, and the relevancy of the conviction or charge offense as it relates to the job duties. Applicants excluded by this screening will be given notice of such. This notice shall offer the applicant an opportunity to provide additional information demonstrating that the exclusion should not be applied. Such notice may be verbal but must be documented by the City.

## **SECTION 5 FAIR CREDIT REPORTING ACT (FCRA)**

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- A. The Fair Credit Reporting Act (FCRA) applies to any employer who receives a "consumer report" from a "consumer reporting agency." A "consumer report" is any oral or written communication which bears on a person's credit worthiness,

credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

- B. Before acquiring a consumer report, the City must notify the subject of the report that one may be obtained and obtain the subject's written authorization via the Disclosure and Authorization Form.
- C. When employment is denied based either wholly or in part on information obtained in a consumer report, the City must provide the applicant with a copy of the report, a summary of rights document, and, if the report is in error, an opportunity to provide the City with more correct or more complete information prior to taking adverse action. Upon taking adverse action, the City must supply the applicant written notice of the adverse action including among other things contact information of the consumer reporting agency.
- D. The City of Gunnison limits pre-screening credit inquiries to situations where the employee is executive or management personnel, an officer, or professional staff and where credit is "substantially related to the employee's current or potential job."

## **SECTION 6     STATUTORY LIMITATIONS**

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- A. Under the Americans with Disabilities Act (ADA), before a conditional job offer has been made, the City may not request any disability information about a job applicant from a former employer that the City could not ask of the job applicant directly.
  - (1) The City may not make inquiries of a former employer regarding an applicant's disability, the nature or severity of the disability, illness, or workers' compensation history.
  - (2) Questions regarding attendance, job functions, and the quantity and quality of work performed by the former employee are allowed.
- B. Title VII of the Civil Rights Act (Title VII)
  - (1) As with the ADA, under Title VII, the City of Gunnison may not request any information relating to protected class status from a reference that the City could not obtain from the job applicant directly. For example, inquiries regarding protected class status such as age, race, sex, religion, or national origin can lead to discrimination claims as these are impermissible basis for employment decisions.
  - (2) Some inquiries may violate Title VII even if they do not expressly relate to a protected class if they have a disparate impact on a particular group of individuals. Such inquiries may be upheld, however, where the inquiry is a job-related connection and consistent with business necessity. For

that reason, all inquiries should have a clear connection to the position for which the applicant is applying.

- (3) The City of Gunnison will not inquire if an applicant has ever filed legal claims, such as discrimination charges, against a former employer.
- (4) If the City of Gunnison conducts a social media search, it may learn about the protected statuses of applicants by information they reveal on social media posts, pages, or profiles. If the City of Gunnison learns such information, it will take steps to ensure that it is not used in the hiring process.

#### C. Genetic Information Nondiscrimination Act (GINA)

- (1) The GINA prohibits the City of Gunnison from requesting genetic information about applicants. While the City of Gunnison does not make such inquiries of applicants, the City of Gunnison could come across this information in a pre-employment medical examination or through a social media screen.
- (2) The City of Gunnison will guard against receipt of genetic information in medical examinations by ensuring that health care providers only tell the City whether the employee is currently physically able to perform the essential functions of the job. Any genetic information that the health care provider must gather to make that assessment should stay with the health care provider.
- (3) Social media searches may also reveal genetic information. For example, an applicant's Facebook page reveals that she has just completed a breast cancer walk. She also reveals that her mother died of breast cancer and that she has the gene that puts her at increased risk of developing breast or ovarian cancer. The City of Gunnison must ensure that this information is kept confidential and does not affect an employment decision about that employee.

#### D. Age Discrimination in Employment Act (ADEA)

- (1) The Age Discrimination in Employment Act (ADEA) prohibits discrimination based on age against employees who are at least 40 years old. It also prohibits employers from retaliating against an applicant or employee for asserting his or her rights under the ADEA.
- (2) The ADEA prohibits age discrimination in all terms and conditions of employment including hiring.

E. Colorado Anti-Discrimination Act (CADA)

- (1) The Colorado Anti-Discrimination Act (CADA) prohibits discrimination based on a person's sexual orientation (including transgender status), religion, disability, race, creed, color, sex, age, national origin or ancestry.
- (2) The statute makes it illegal for Colorado employers to refuse to hire any member of the protected classes listed above.

F. Special Industry Regulations

Federal and state laws and regulations govern the employment of individuals with specific convictions in certain industries or positions. The City of Gunnison shall comply with applicable laws and regulations when making hiring decisions.

G. Other Federal or State Laws

The City of Gunnison will guard against discrimination based on any other status protected by state or federal law