# Police Background Checks Policy

## POLICY STATEMENT

Many positions at the City of Hamilton are safety or security sensitive or are otherwise premised upon the City placing a higher degree of trust in the integrity of its employees. As a provider of public services, it is incumbent on the City to exercise due diligence by ensuring, to the extent reasonably possible, that employees and volunteers who provide such services do not pose a risk to vulnerable individuals, other employees, or to the best interests of the City of Hamilton.

## PURPOSE

The purpose of this policy is to:

- create a coordinated and consistent approach to identifying positions within the City that require a Police Background Check
- ensure that sensitive information provided by applicants and employees is handled appropriately and that the privacy rights of individuals are protected

## SCOPE

This Policy applies to all City employees, including but not limited to regular, temporary, contract employees, volunteers, students, and interns (collectively called “employees”) who are required to submit a Police Background Check as a bona fide occupational requirement.

The Policy may also apply to external candidates applying to a position designated as requiring a Police Background Check, in addition to employees who are being assigned or promoted into a position requiring a Police Background Check where the employee did not submit such a check at the time of employment.

This Policy is intended to supplement, and not supersede, any other requirements imposed by any applicable legislation or standards of professional practice.

## DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>Bona Fide Occupational Requirement</td>
<td>A requirement or qualification of a position, necessitated by the safe, efficient, and reliable performance of the essential duties of the job or the functioning of the organization.</td>
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<tr>
<td>Designated Position</td>
<td>A position determined by the City, through a legislative requirement or as a result of the nature of the position, as requiring a Police Background Check.</td>
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**Record Suspension**
Formerly known as a pardon, a decision by the National Parole Board upon application by an individual to have his or her record sealed. Once a Record Suspension is granted, the record, including fingerprints, photographs, and RCMP and court records are then sealed, and never opened unless the individual is subsequently charged with a criminal offence or unless, for sexual offences, a record is disclosed during a vulnerable sector screening check.

**Police Background Check**
A process where the police conduct a check of an individual’s record through the Canadian Police Information Centre (CPIC). The police provide a report of their findings to the individual, which may include information about criminal convictions, federal or provincial charges discharged or pending, and probation or prohibition orders.

A **positive** finding may indicate that the individual has a record(s) or incident on file. A clear finding indicates that the individual does not have a record(s).

There are three types of Police Background Checks available:

**Criminal Records Check**: A record search conducted by a police authority, which identifies if an individual has a criminal conviction for which a Record Suspension has not been granted, including findings of Guilt under the Youth Criminal Justice Act within the applicable disclosure period. This check does not provide any further information such as outstanding charges, warrants, or instances of local police contact.

**Criminal Record and Judicial Matters Check (formerly called a Police Information Check - PIC)**: A comprehensive review of the criminal file of an applicant conducted by a police authority, which compiles offence information, including convictions, outstanding warrants, charges and judicial orders available from a local police agency’s records management system and other systems/records where authorized.

**Vulnerable Sector Check (VSC)**: In addition to the information provided in the Criminal Records and Judicial Matters Check, the Vulnerable Sector Check identifies whether or not an individual has a sexual offence recorded in their name in Canada for which a Record Suspension has been granted or issued. In this type of check, non-conviction information is released only in exceptional cases.

The Vulnerable Sector Check will only be issued where a police service is satisfied that the position meets the following criteria: (a) the position is one of trust or authority towards that child or vulnerable person; and (b)
Vulnerable Persons

the applicant has consented in writing to the verification.

Persons who, because of their age, disability, or other circumstances, whether temporary or permanent, are (a) in a position of dependence on others; or (b) are otherwise at a greater risk than the general population of being harmed by persons in a position of authority or trust relative to them.

PRINCIPLES

1. Information from Police Background Checks will be collected, used, and disclosed in compliance with the Ontario Human Rights Code, the Municipal Freedom of Information and Protection of Privacy Act, the Criminal Records Act, the Police Record Checks Reform Act, and all other applicable legislation.

2. The City abides by all Provincial statutes that outline specific legislative authority for Police Background Checks for specific positions and service delivery areas, including, but not limited to:

   Day Nurseries Act, R.S.O. 1990 c.D2, as amended
   Ambulance Act, R.S.O. 1990, CHAPTER A.19
   Long-Term Care Homes Act, 2007 S.O. 2007, CHAPTER 8

TERMS & CONDITIONS

1. Bona Fide Occupational Requirement

   1.1. Police Background Checks will be requested only where there is a bona fide occupational requirement.

   1.2. To be a bona fide occupational requirement, the position must meet the following criteria:

   (a) a clear Police Background Check is mandated by legislation or by policy of a Provincial or Federal authority; or

   (b) the individual performing the position will be in a position of trust or authority over vulnerable persons; or

   (c) the position requires the incumbent to handle significant amounts of money in a relatively unsupervised environment; or

   (d) the position is one that involves security or safety of assets or persons; or

   (e) a clear Police Background Check is required to fulfill some other requirement of the position.
### 2. At the Time of Employment, Assignment, or Promotion

| 2.1 Each department is responsible for pre-determining the positions, based on a bona fide occupational requirement, that require either a (1) Criminal Record Check; (2) Criminal Record and Judicial Matters Check; or (3) Vulnerable Sector Check. |
| 2.2 Human Resources, in consultation with departments, must approve the designation of positions that require a Vulnerable Sector Check, unless such designation is legislatively mandated. |
| 2.3 Human Resources will maintain an up to date list of approved Designated Positions. |
| 2.4 Where a Police Background Check is required, the job description and any advertisement regarding the position must clearly indicate that: "In accordance with the City of Hamilton’s Policy on Police Background Checks, the position requires that the individual provide, at his or her own cost, a clear [Criminal Record Check, Criminal Record and Judicial Matters Check or Vulnerable Sector Check] as a condition of employment." |
| 2.5 Police Background Checks must be conducted by the Police Services in the jurisdiction where the applicant or employee resides. Individuals who reside in smaller jurisdictions that do not have their own Police Services will be required to obtain a Police Background Check from the RCMP or designated agency. |
| 2.6 Generally, a Police Background Check will only be requested as a part of a conditional offer of employment. No individual will be placed in employment or volunteer service until a Police Background Check has been received and considered. There may be specific circumstances in which the submission of a clear Police Background Check is required earlier in the application process (e.g. paramedics). |
| 2.7 There may be instances where Police Services will deny a request for a Vulnerable Sector Check if they feel that the position identified does not meet the criteria necessary for the screening. In this situation, the City has authority to proceed with a hire decision based on the level of search provided and deemed sufficient by Police Services. |
| 2.8 If a person under the age of 18 is placed in a position where they are working with vulnerable persons, a Criminal Record and Judicial Matters Check is considered sufficient. The Criminal Record and Judicial Matters Check queries all the same information banks as the VSC check with the exception of the RCMP’s Pardoned database. |
2.9 Individuals applying for employment or volunteer opportunities are responsible for applying for, paying the costs of, and submitting the results of all Police Background Checks. The original version of the Police Background Check provided shall be returned to the applicant.

2.10 Current employees who are being assigned or promoted into a Designated Position requiring a Police Criminal Records Check, a Police Information Check or a Vulnerable Sector Screening Check, where such check was not previously provided, will be required to submit a background check prior to being assigned or promoted.

2.11 Individuals who fail to provide a Police Background Check, having been asked to do so, will not be considered for employment or volunteer opportunities.

2.12 Human Resources is responsible for receiving, considering, and safeguarding the results of any submitted Police Background Checks. In the exceptional circumstance where the operating department is mandated to maintain the results, the department will ensure that the results are appropriately and securely filed and that access to the information is on a strict need-to-know basis.

2.13 In the event, that a Police Background Check received has a positive finding, Human Resources will determine if the Police Background Check is satisfactory to the City. Human Resources may consult with the Hiring Department in this assessment. A check that is positive must be approved by Human Resources prior to a department proceeding with an employment offer, assignment, transfer, promotion, etc.

2.14 As a Police Background Check contains personal information, it must not be kept for longer than necessary or for purposes other than it was originally intended for. Once reviewed and receipt is documented for the employee file, the check must be returned to the applicant.

3.1 Departments are responsible for determining if applicable legislation dictates whether, and at what frequency, the individual's Police Background Check must be renewed. The frequency of renewal must be identified in the job description and any advertising for the position at the time of initial hire.

3.2 Individuals occupying a position where a renewed Police Background Check is legislatively required are responsible for consenting to the renewal check as a condition of employment or continued employment.
3.3 Human Resources is responsible for receiving, considering, and safeguarding the results of any renewed Police Background Checks. In the exceptional circumstances where the operating department is mandated to maintain the results, the department will ensure that the results are appropriately and securely filed and that access to the information is on a strict need-to-know basis.

3.4 If a renewal check is returned with a positive finding, Human Resources may consult with the department to determine the impact, if any, on the individual's employment or volunteer service.

3.5 As a Police Background Check contains personal information, renewal checks must not be kept for longer than necessary or for purposes other than it was originally intended for. Once reviewed and receipt is documented for the employee file, the check must be returned to the employee.

3.6 Employees who were initially hired with a requirement for a Police Background Check shall immediately notify their manager or division head of any change that would negatively affect their record. Failure to do so shall be considered grounds for disciplinary action, up to and including termination.

3.6.1 For positions requiring a Criminal Records Check, changes to be reported would include convictions

3.6.2 For positions requiring a Criminal Record and Judicial Matters Check or a Vulnerable Sector check, changes that must be reported include convictions, outstanding warrants, charges and judicial orders

3.7 A department must consult with Human Resources on any changes to an employee’s Police Background Check

3.8 Where there is a reasonable basis to believe that there may be changes to an employee’s police record, the City reserves the right to request an updated Police Background Check at any time during the course of employment.

4. Exceptions

4.1 Only the Executive Director of Human Resources or his/her designate is authorized to make exceptions to this Policy. Where a Police Background Check comes back positive, the Executive Director of Human Resources or designate will consider the following factors in making an
exception to this policy:

(a) the nature of the position;

(b) the inherent safety and security risks in performing the position;

(c) the justification for the bona fide occupational requirement;

(d) the underlying legislative scheme, if applicable;

(e) the nature of the conviction;

(f) the number of convictions;

(g) the time elapsed since the conviction (if compelling) and the frequency of convictions (if applicable);

(h) whether the individual should and can be accommodated in the position to the point of undue hardship in accordance with the City’s Employment Accommodation Policy;

(i) whether the individual is in the process of securing a Record Suspension;

(k) whether it is appropriate to extend a conditional offer pending receipt of the Record Suspension; and

(l) any other factors deemed appropriate in the circumstances

The Executive Director of Human Resources or his/her designate will consider a Police Background Check as complete and is not required to make any inquiries as to the accuracy of the information on which it was based.

**COMPLIANCE**

Violations of this Policy may result in appropriate disciplinary measures, up to and including termination of employment or offer of employment.

**RELATED DOCUMENTS**

The following are related documents to this Policy:

1. Employment Files Policy
2. Employment Accommodation Policy
3. *Ontario Human Rights Code*
4. *Municipal Freedom of Information and Protection of Privacy Act*
5. *Criminal Records Act*
6. *Police Record Checks Reform Act*
7. Day Nurseries Act
8. Ambulance Act,
9. Long-Term Care Homes Act

HISTORY

The Corporate Policy Review Group and Legal Services were consulted in revisions made to this Policy.

This policy replaces the Police Background Checks Policy 2009-07-30

The updated policy was approved by the Executive Director of Human Resources and Organizational Development in consultation with the Human Resources Leadership Team on 2016-08-23