CHARLOTTE

City Council
Follow-Up Report

November 20, 2012

November 12, 2012 – City Council Business Meeting

Ban the Box Issue

Staff Resource: Cheryl Brown, Human Resources, 704-336-5703, clbrown@charlottenc.gov

During the Mayor and Council Topics portion of the meeting, Council member Mayfield requested information relative to the ban-the-box issue. Council has been contacted by the Civil Rights Clinic at the Charlotte School of Law advocating "Ban the Box" i.e. an initiative seeking to remove the initial conviction history question from City job applications. The City Manager sent a formal response to Council on this matter on November 2. The Mayor also requested that the previously distributed memo on this issue be circulated again. Attached for review is the November 2011 memo from the City's Human Resources Department detailing the City's policy and position on banning the crime conviction box on City job applications.

HR Memo.pdf

CITY OF CHARLOTTE
HUMAN RESOURCES DEPARTMENT

M E M O R A N D U M

To: Isaac Sturgill
Charlotte School of Law Civil Rights Clinic

From: Cheryl Brown
Human Resources Director

Date: November 3, 2011

Subject: Ban the Box Request

Per your email request, Hope Root and I have reviewed the City's current application and background check requirements along with reviewing my notes from our telephone conversation last spring. I also re-read your email to Hope, written on May 2, 2011, and reviewed the proposed ordinance and resolution. Hope and I still maintain that the City's existing policy, which prohibits discrimination of applicants seeking city employment, based upon criminal history, is legally grounded. To reiterate a few points:

- An applicant's arrest history is neither requested nor used in the City's hiring process.
- The City's application initially requires a "yes" or "no" response to the question: "Have you ever pled guilty or been convicted of a crime other than a minor traffic violation." The application also states, in a statement outlined for attention-drawing purposes: "A conviction does not mean you cannot be hired; the nature and dates of the offense will be evaluated in relation to the job for which you are applying." The application further provides a space for those applicants checking the "yes" box to further explain convictions and circumstances in the applicant's own words at the time of application.
- The City's existing Policy is currently and shall remain consistent with the EEOC's position of how and when to use criminal background checks.
- Due to the City's use of outside vendors for completion of criminal background checks, the City must comply with the Fair Credit Reporting Act. This Act gives applicants a warning if the City is not going to hire an applicant because of a conviction and gives the applicant a chance to explain and/or take care of a mistake that is on his/her record.

Additionally:

- New and current hiring managers are trained and reminded that an applicant's conviction history is prohibited from being used as part of the hiring process and cannot be a basis for denying employment unless the denial of employment is determined to be due to job-related issues or business necessity.

- The City does not conduct background checks at the time an application is received. Background checks are only initiated upon a hiring manager determining an applicant is among a small group of finalists under consideration for a given position. Additionally, the Pre-Employment Background Checks Policy only allows limited types of background checks of those applicants, depending on the nature of the position.
- All final applicants undergo criminal background checks; however, convictions are not an automatic bar to employment, unless the denial of employment is determined to be due to job-related issues or business necessity.
- City of Charlotte vendors and contractors are required to perform background checks on all persons working on City contracts. This requirement is stated within each of the executed contracts. The City does not maintain this information and does not prohibit persons with conviction histories from working on City contracts. Vendors and contractors are given autonomy in their hiring decisions.

As you know, Minnesota was the first state in the country to implement a "Ban the Box" Law. At the same time, however, the employer liability law, or "Safe Hiring" Law also took effect. This law prohibits the introduction of an employee's or former employee's criminal history as evidence in a civil action against the employer under certain circumstances. There is no such law for the City of Charlotte to rely upon to protect the organization and City taxpayers in the event of a negligent hiring lawsuit.

The current City work force includes individuals who were hired with known criminal histories. We maintain that our current policy, combined with our hiring philosophy and supervisory training, serve to show the City's commitment to afford application, interview and hiring opportunities to all individuals, without discriminating against those with or without criminal histories.

CLB/ts