



## City of Phoenix

<b>ADMINISTRATIVE REGULATION</b>	A.R. NUMBER
	4.45 Revised
SUBJECT	FUNCTION
	Legal Matters
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<b>CONTRACT WORKER BACKGROUND CHECKS</b>	EFFECTIVE DATE
	September 1, 2018
	REVIEWED DATE

This Administrative Regulation (AR) describes the requirement that background checks be conducted on contract workers performing work for, or on behalf of, the City. This AR applies to all new contracts and contract amendments executed on or after September 1, 2018.

The Security and Access Review Committee is made up of representatives from City departments and is charged with assuring that access is appropriate, consistent, and controlled. The committee is co-chaired by the Public Works and Office of Homeland Security and Emergency Management.

Contractors are required to comply with the security measures at each individual work location within the City.

Questions regarding this AR should be directed to the Public Works Department Badge Imaging Office at 602-534-4611.

### I. PURPOSE

This AR describes the City's policy and practice for conducting background checks on contract workers. The goal of this policy is to ensure that individuals who are hired to perform work for the City do not represent a risk to the City or community due to factors in their background that are known or should have been known.

Two levels of risk have been established that require background checks to cover City contracts. The first level (Standard) involves circumstances where background checks are required and conducted by the contractor. The second level (Maximum with Criminal Justice Information Services (CJIS) as a subset of Maximum) is a background check that is conducted by the contractor, but reviewed and approved by the contracting City department, except for CJIS related and those required for children and vulnerable adults.

Criminal Justice Information Services (CJIS) background checks will be conducted by the Phoenix Police Department or the Arizona Department of Public Safety.

## II. DEFINITIONS

*Background check* is the fact gathering process, as described in this AR, that is conducted to obtain information regarding a person's legal Arizona worker eligibility, criminal history, driving history, certifications, or other matters that might affect the person's ability or fitness to perform services for the City.

*Child care provider* means a center-based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that:

- (a) Is not an individual who is related to all children for whom child care services are provided; and
- (b) Is licensed, regulated, or registered under State law or eligible to receive federal assistance.

*Child care staff member* means an individual (other than an individual who is related to all children for whom child care services are provided):

- (a) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;
- (b) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or
- (c) Any individual residing in a family child care home age 18 and older.

*Contract worker* means a person performing services for the City such as:

- an individual who has a contract with the City;
- a worker of an entity that has a contract with the City;
- a worker of a subcontractor of an entity that has a contract with the City; or
- a worker of a tenant/lessee of the City.

*Contractor or Consultant* means a person or entity that has a contract with the City to perform services for the City.

*Contract Worker Disclosure* ("Disclosure") means the contractor will require each worker who is performing work for the City under the terms of the contract to complete an affidavit of prior criminal record. The Disclosure will require the contract worker to list all criminal convictions, including the nature of the crime, the date of the conviction, and the location where the crime and conviction occurred. The Disclosure also grants the City the right to review the background check results.

*Personal Identifying Information* means any written document or electronic data that does or purports to provide information concerning a name, signature, electronic identifier or screen name, electronic mail signature, address or account, biometric identifier, driver or professional license number, access device, residence or mailing address, telephone number, employer, student or military identification number, social security number, tax identification number, employment information, citizenship status or alien identification number, personal identification number, photograph, birth date, savings, checking or other financial account number, credit card, charge card or debit card number, mother's maiden name, fingerprint or retinal image, the image of an iris or deoxyribonucleic acid or genetic information.

*Vulnerable Adult* means an individual who is 18 years of age or older who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment. (See Arizona Revised Statutes (ARS) Section 13-3623.F.6).

*Criminal Justice Information Services (CJIS)* outlines the security precautions that must be taken to protect sensitive information like fingerprints and criminal backgrounds gathered by local, state, and federal criminal justice and law enforcement agencies. Contact the department's badging office or badging liaison for facilities that are identified as Criminal Justice Information System (CJIS) sites.

### **III. BACKGROUND CHECK**

#### **A. Standard Risk Background Check**

1. A standard risk background check will be conducted for the contract term or 5 years, whichever is shorter when the contract worker's work assignment will result in any of the following:
  - Requires a badge or key for access to City facilities; or
  - Access to sensitive, confidential records, Personal Identifying Information or restricted City information; or
  - Unescorted access to City facilities during normal and non-business hours.
2. Standard Risk level will require a background check based on real identity/legal name and include felony and misdemeanor records checks from any county in the United States, the State of Arizona, plus any other jurisdiction where the contract worker has lived at any time in the last seven years.

#### **B. Maximum Risk Background Check**

1. A maximum risk background check will include all search criteria performed under a standard background check.
2. A maximum risk background check will be conducted for the contract term or 5 years, whichever is shorter, except as noted for child care or CJIS related contracts when the contract worker's work assignment will result in any of the following:
  - Work directly with vulnerable adults or children (under the age of 18) (see definitions).
  - Responsibility for the receipt or payment of City funds or control of inventories, assets, or records that are at risk of misappropriation.
  - Unescorted access to City data centers, money rooms, or high-value equipment rooms.
  - Access to private residences.
  - Access to Homeland Defense Bureau identified critical infrastructure sites/facilities.
  - Responsibility or access to City identified critical infrastructure sites, City networks or data, cyber/IT/Network assets, digital or cyber assets, workstations or servers (either remote access (VPN) or direct access).
3. Maximum Risk Background Check Must Include:
  - Criminal record, conviction of a misdemeanor (not including traffic or parking violation) or felony.
  - Sexual offender search.
  - All outstanding warrants.

4. Maximum Risk Background Check for Child Care Staff Member Must Include:
  - A Federal Bureau of Investigation fingerprint check using Next Generation Identification.
  - A search of the National Crime Information Center's National Sex Offender Registry.
  - A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the last five years:
    - (i) State criminal registry or repository, with the use of fingerprints being:
      - (A) Required in the State where the staff member resides;
      - (B) Optional in other States;
    - (ii) State sex offender registry or repository; and
    - (iii) State-based child abuse and neglect registry and database.
5. Criminal Justice Information System (CJIS) Background:
  - The background checks for this level will consist of a local, state and national fingerprint-based record check to be conducted by the Phoenix Police Department or the Arizona Department of Public Safety.
  - An additional CJIS check will be performed if unescorted access is required to an identified CJIS location or if the contractor will have access to CJIS infrastructure or information.
6. Additional Required Background Check Based on Work Scope:
  - Credit Check (for cash handling, accounting, and compliance positions only).
  - Driving records (for driving positions only).
  - Fingerprint verification (when contract worker is working directly with children or vulnerable adults or job takes the individual to a CJIS location).
7. Legal Requirements: Contract workers who work directly with children or vulnerable adults are subject to fingerprint verification.
  - Contract worker maximum or Criminal Justice Information System (CJIS) background check will be valid for whichever is shorter, the contract term or three years for healthcare or nursing care related contracts

For more information regarding background check access and risk levels, see the attached Levels of Access Guide.

#### **IV. EVALUATING RESULTS**

##### **A. Contract**

The contracting department is responsible for incorporating the appropriate language, based upon the level of background check required, into the solicitation and final contract documents.

1. Standard Risk Background Checks: The contractor will be responsible for determining whether contract worker(s) are disqualified from performing work for the City under the terms of the contract for standard risk level background checks. Sole proprietors must submit a copy of their own background checks.

2. Maximum Risk Background Checks: The contracting department will review and approve maximum risk background check results provided by the contractor. Information to verify the results will be returned to the contractor after the City's completed review. The City may set up a secure folder or drop box for confidential materials.
  - The City will not keep records related to background checks once they are confirmed.
  - The City will only respond with an "approve" or "deny."
3. Criminal Justice Information System (CJIS) Background Checks: The Police Department Local Agency Security Officer (LASO) must review and approve all CJIS background checks.

B. Requirements

1. The Department will obtain a list of eligible contract workers from the contractor. This process must be completed prior to the contractors starting work.
2. The contract worker is to work directly with the contractor, not the City, to resolve any disputes related to the background check process or any outstanding criminal history records check information.
3. In making the determination of whether information contained in the results of the background checks constitute grounds for disqualification of a contract worker, the contractor and contracting department should be guided by these principles and guidelines:
  - a. Disqualification decisions should not be based solely on a criminal conviction, unless the conviction is related to performance under the contract. Arrests that did not result in a conviction or have not been charged may not be considered when determining whether a contract worker is disqualified.
  - b. Not all criminal convictions or other negative information obtained in the background check will disqualify the contract worker from providing services or working under the contract. The contracting department (for maximum risk levels) must evaluate the relevance of the information received to the services that will be provided.
  - c. To determine if a contract worker's negative background information disqualifies that person, these factors should be analyzed:
    - Duties of the specific position.
    - Time, nature, and number of negative events / convictions.
    - Attempts and extent of rehabilitation efforts
    - The relation between the duties of the job, and the nature of the crime committed.
  - d. The analysis of whether any item in a background check is a potentially disqualifying factor involves looking at the contract work requirements, scope of work, where the work is to be done, the access to restricted areas, and the type of people or places that the contract worker will encounter. Then the background results should be reviewed to determine whether the nature of the crime reported would create a risk to the City based on the contract requirements. An example of this analysis would be as follows:
    - Standard Risk Background Check: For a contract worker requiring a standard risk background check, potentially disqualifying convictions could include a record of theft, identity theft, computer fraud or abuse, burglary, arson, crimes against property, violent crimes, or other crimes involving dishonesty, or embezzlement.

- Maximum Risk Background Check: For a contract worker requiring a maximum risk background check, potentially disqualifying convictions could include a record of child molestation, assault, sexual assault, crimes against a person, public indecency, drug offenses, forgery, theft, burglary, arson, crimes against property, violent crimes, crimes for financial gain, identity theft, computer fraud or abuse, and embezzlement.
- e. If a contract worker has a criminal record that includes a disqualifying conviction, that person will not be permitted to perform work for the City under the contract.
- f. If the records check indicates that the disposition of the criminal case is unknown, the contractor must determine the disposition.

### **C. CONTRACTOR REQUIREMENTS**

1. The contractor will require a Contract Worker Disclosure for each contract worker who is performing work for the City, which will be made available to the City upon request. The contractor will also be responsible for obtaining a background check required by this AR on every contract worker that will be assigned to work for the City.
2. In the Standard category, the contractor will be responsible for reviewing the results of the background check, and deciding if any contract worker should be disqualified for work under a City contract pursuant to the criteria set forth in this Section IV, Evaluating Results. The contractor is required to engage in whatever due diligence is necessary to make the decision on whether to disqualify a contract worker. Once the contractor has decided, the list of names of qualified contract workers will be submitted to the contracting department.
3. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees which will assist on the contract and for whom the requirements of this AR apply.
4. In the Maximum category, the contractor will perform the same review as required in the Standard category. However, when submitting the list of qualified contract workers, the contractor will also submit the results of the background check to the contracting department. If, upon review of the information submitted, the City advises the contractor that it believes a contract worker should be disqualified, the City will notify the contractor of that fact, and the contractor will reevaluate the contract worker to determine whether the person should be disqualified. If the contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the contractor will discuss those circumstances with the contracting department. The contracting department decision will be considered final.

### **D. CONTRACT LANGUAGE**

The following types of provisions may be recommended in all contracts requiring background checks on contract workers:

- A provision requiring a contractor to acknowledge the City may require a background or security screening of the contractor's workers be conducted by the contractor.
- A requirement that the contractor, after obtaining the results of a background check, will determine if the background check results contain any potentially disqualifying factors, and allow those contract workers to work under the contract who do not have disqualifying factors in their record.

- Contract worker maximum or Criminal Justice Information System (CJIS) background check will be valid for whichever is shorter, the contract term or three years.

## **E. DEPARTMENT COMPLIANCE**

Each department is responsible for complying with the requirements of this AR; non-compliance may be considered a violation of the Procurement Code.

## **F. VARIANCES AND EXEMPTIONS**

1. There are federal and state regulations that necessitate an exemption from this policy. Contract workers who fall under these areas may be considered exempt from this policy, as well as other acceptable evidence of an existing background check or clearance:
  - Federal Homeland Defense Bureau (e.g. Aviation, Water Services, Transit, Police and Fire Departments).
  - Transportation Security Administration (e.g. Aviation, Fire, and Police Departments).
  - Federal Aviation Administration (e.g. Aviation, Police, and Fire Departments).
  - Department of Public Safety (DPS) Administration – presenting a current Level One Department of Public Safety fingerprint card (e.g. Human Services, Housing, Parks, and Aviation Departments).
  - Arizona or other State Bars (Lawyers registered to practice and licensed by a State bar).
  - Existing evidence of a background check performed within the last 3-5 years may be approved by the authorized department, if the contract worker's background check fits all required criteria herewithin.
2. Any variance from this policy is to be reviewed and approved by the Security and Access Review Committee.

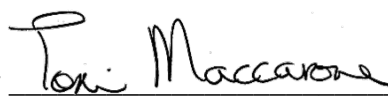
## **G. AUDITING AND PROCESS REVIEW**

1. Departments will perform regular Contract Worker Disclosure audits and process reviews per prescribed City guidelines in conjunction with the implementation of this AR. The City Auditor Department may also perform audits as it deems necessary.
2. Violations of this AR may result in disciplinary action up to and including termination.

## **H. QUESTIONS**

Questions regarding this AR should be directed to the Public Works Department Badge Imaging Office at 602-534-4611.

ED ZUERCHER, City Manager

By   
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Acting Deputy City Manager

### LEVELS OF ACCESS GUIDE

This table can be used as a guide in determining what type / level of access is needed in an area.

Exposure Type	Potential Target	Risk	Security Risk Level	Typical Features	Security Requirements
Theft of tools, equipment, computers, Petty cash, & other low value assets (<\$5,000).	Shops Warehouses Storerooms Cash drawers General office areas	(1) Small monetary loss (2) Loss of low value assets	Standard Risk Level	Partially secure - area is not secure but identification system makes detection likely. Badging & Key Control Systems Effective Administrative Controls. *	(1) Identity of person entering area should be known and verifiable. (2) Person entering must have a demonstrated and approved need for access. (3) Public must be escorted by a City employee.
Violence, Irrational Behavior	Employees of the City Elected officials	(1) Injury or death (2) Loss of employee confidence	Standard Risk Level or Maximum as applicable**	Partially secure - area is not secure but identification system makes detection likely. Badging & Key Control Systems Effective Administrative Controls. *	(1) Identity of person entering area should be known and verifiable. (2) Person entering must have a demonstrated and approved need for access. (3) Public must be escorted by a City employee.
High Value Theft (> \$5,000)	Servers, Databases, Money Rooms Equipment	(1) Large monetary loss (2) Loss of valuable assets (3) Public criticism	Maximum Risk Level	Very secure – physical barriers surround areas that are very difficult to breach. Any breach would be detected. Badging & Key Control Systems Effective Administrative Controls. * Card Readers at all entry points.	(1) Identity of person entering area should be known, verifiable and documented. (2) Person entering must have a demonstrated and approved need for access. (3) Public must be by escorted a City employee.



Data Theft Infrastructure Attack	Data processing centers Billing Centers Water plants Communications centers Infrastructure Elections Areas HIPAA or State or federally mandated to protect HAZMAT areas	(1) Substantial business interruption (2) Substantial damage (3) Substantial monetary loss (4) Public criticism and lack of confidence (5) Fines and liability (6) Terrorism (7) Catastrophic Loss (8) Injury and death (9) Loss of public's sense of security	Maximum Risk Level	Completely Secure – formidable physical barriers surround areas that are virtually impossible to breach. Any breach would be detected. Badging & Key Control Systems Effective Administrative Controls* Card readers at all entry points Record of persons entering- identity, date and time Video surveillance at entry points	(1) Identity of person entering area should be known, verifiable and documented (2) Persons entering have had a background check with a high level of scrutiny. (3) Approval of access must be by a functional head of the facility or restricted area. This authority cannot be delegated. (4) All breaches should be detected and investigated (5) Access lists must be established and audited frequently (such as monthly or quarterly).
Children and Vulnerable Adults	Children, <i>Vulnerable Adult</i> means an individual who is eighteen years of age or older who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment Children and Elderly programs, and other Specialty programs where direct contact with these populations occur	(1) Public criticism and lack of confidence (2) Injury and death (3) Loss of public's sense of security	Maximum Risk Level	Very secure – physical barriers surround areas that are very difficult to breach. Any breach would be detected. Specialized Systems, Badging & Key Control Systems Effective Administrative Controls	(1) Per City Code 2-27; City Ordinance (formerly PCC 2- 45.6 - Ord. No. G-5047, 1, Adopted 12-19-2007, eff. 1- 18-2008) (2) Per ARS Section 46-141

\*Effective Administrative Controls include – designated administrator, clear policies & procedures stating importance of system, employees required to challenge unbadged persons & report infractions, tailgating prohibited (letting others into an area without requiring them to use their access badge), periodic audits & inspections, reliable inventory system for badges & keys, and appropriate penalties for violations of policy, and ongoing maintenance of systems, policies, etc.

\*\* Person interacting with Elected Officials or directly working in elected official areas.