

CHAPTER 13
CRIMINAL BACKGROUND CHECKS

Last Updated: June 14, 2010

13-1 DEFINITIONS

As used in this Chapter:

(1) “Applicant” means a person who seeks employment with the District as an employee.

(2) “Division” means the criminal investigation and technical services division of the Department of Public Safety, established at Utah Code Ann. § 53-10-103.

(3) “Independent Contractor” means an engineer, contractor, general contractor, subcontractor, consultant or supplier who designs, constructs, operates, maintains, repairs, replaces or provides water treatment or conveyance facilities or equipment, related goods or services, or related control or security facilities or equipment to the District.

13-2 CRIMINAL BACKGROUND CHECKS FOR APPLICANTS FOR EMPLOYMENT

The District may require an Applicant to submit to a criminal background check as a condition of employment if, in the judgment of the GM the Applicant may be in a position to affect the safety or security of District works and waters or affect the safety or well being of patrons, visitors, and employees of the District.

13-3 CRIMINAL BACKGROUND CHECKS FOR EXISTING EMPLOYEES

The District may require an existing employee to submit to a criminal background check if the employee’s job responsibilities and/or work location change such that, in the judgment of the GM the existing employee may thereafter be in a position to affect the safety or security of District works or waters, or affect the safety or well being of patrons, visitors, and employees of the District.

13-4 CRIMINAL BACKGROUND CHECKS FOR INDEPENDENT CONTRACTORS

(1) The District may require an Independent Contractor and any employees of an Independent Contractor to submit to a criminal background check as a condition to performing work, or continuing work, for the District if, in the judgment of the GM the Independent Contractor may be in a position to affect the safety or security of District

works and waters or affect the safety or well being of patrons, visitors, and employees of the District.

(2) The District may require Independent Contractors to certify that all their employees working on District projects and facilities have undergone criminal background checks and meet District requirements under this Chapter if, in the judgment of the GM the Independent Contractor and/or his employee(s) may be in a position to affect the safety or security of District works or waters or affect the safety or well being of patrons, visitors, and employees of the District. Failure by an Independent Contractor to perform adequate background checks or failure by an Independent Contractor to accurately certify all employees working on District projects and facilities shall be grounds for immediate termination and dismissal of the Independent Contractor by the District, notwithstanding any contrary language in the contract between the District and the Independent Contractor. The District does not undertake any responsibility to Independent Contractors to perform criminal background checks on the employees of Independent Contractors for the benefit of persons or entities other than the District. Any criminal background checks on Independent Contractor employees performed by or on behalf of the District are for the use and benefit of the District only, and should not be relied upon by any Independent Contractor for any purpose other than meeting the District's security requirements.

13-5 CRIMINAL BACKGROUND CHECK PROCEDURE

(1) Each Applicant, employee, Independent Contractor or employee of any Independent Contractor shall, if requested by the District:

- (a) Submit a fingerprint card in a form acceptable to the Division; and
- (b) Consent to a criminal background check through:
 - (i) The Utah Bureau of Criminal Identification and/or
 - (ii) The Federal Bureau of Investigation.

(2) If requested by the District, the Division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each Applicant, employee, Independent Contractor or employee of an Independent Contractor through a national criminal history system.

(3) The District shall then evaluate the result of the criminal background check in accordance with the criteria described in Section 13-6 below.

13-6 CRITERIA FOR REJECTION OF APPLICATION FOR EMPLOYMENT, TERMINATION OF EMPLOYMENT, TERMINATION OF INDEPENDENT CONTRACTOR RELATIONSHIP, OR TERMINATION

OF ACCESS TO DISTRICT WORKS AND/OR WATERS

(1) If a criminal background check reveals that an Applicant, employee, Independent Contractor or employee of an Independent Contractor failed to accurately disclose a criminal history, the District may reject the application for employment, terminate employment, terminate the Independent Contractor's contract and relationship with the District, restrict or deny access to District works and/or waters to any Applicant, employee, Independent Contractor, or employee of any Independent Contractor, or take other security measures.

(2) Criminal activity which will preclude employment and access to District works and waters includes but is not limited to conviction of any crime grounded in violence, deceit or other behavior which would indicate a potential risk for the safety of District works and waters and the safety or well-being of patrons, visitors and employees of the District.

(3) The District may reject an application for employment, terminate employment, terminate an independent contractor's contract and relationship with the District, restrict or deny an employee, Independent Contractor, or employee of an Independent Contractor access to District works and/or waters, or take other security measures, if a criminal background check reveals any of the crimes listed below. This list shall be considered illustrative and not be considered exhaustive, and the GM shall have discretion to consider crimes not listed below as grounds for such actions.

- (a) Felony conviction or pending indictment for:
 - (i) Homicide;
 - (ii) Felony crimes against a person, including but not limited to, assault and battery;
 - (iii) Sex offenses, including but not limited to, lewdness, assault, incest and rape;
 - (iv) Child molestation or abuse;
 - (v) Robbery or Burglary;
 - (vi) Theft;
 - (vii) Arson;
 - (viii) Kidnapping;
 - (ix) Drug related offenses;

- (x) Fraud; or
- (xi) Outstanding felony warrant.
- (b) Misdemeanor conviction or pending indictment within the last ten (10) years for:
 - (i) Any of the crimes listed in subpart (a), above;
 - (ii) Weapons violations;
 - (iii) Property crimes;
 - (iv) Forgery; or
 - (v) Gambling offenses.

13-7 NOTICE OF CRIMINAL BACKGROUND CHECK

The District shall provide written notice to the Applicant, employee, Independent Contractor or employee of an Independent Contractor who is the subject of the criminal background check that a criminal background check has been requested. Such notice shall be given to this person within three (3) business days of the request for the background check. With respect to a background check of an employee of an Independent Contractor, the District may notify the Independent Contractor, and request that the Independent Contractor notify its employee. An application for employment or contract with an Independent Contractor shall be considered sufficient written notice for purposes of this Section.

13-8 COSTS OF CRIMINAL BACKGROUND CHECKS

The District shall pay the cost associated with the requested criminal background checks.

13-9 WRITTEN NOTICE OF EMPLOYMENT TERMINATION – RIGHT TO RESPOND AND SEEK REVIEW

(1) If the District terminates an existing employee based on information obtained through a criminal background check, the District shall:

- (a) Notify the employee in writing; and
- (b) Give such person an opportunity to respond to the reasons and to seek review of the termination of employment through the administrative procedures set forth the District Employee Manual.

13-10 WRITTEN NOTICE OF REJECTION OF APPLICATION FOR EMPLOYMENT, TERMINATION OF AN INDEPENDENT CONTRACTOR, OR RESTRICTION OF ACCESS TO DISTRICT'S WORKS OR WATERS – RIGHT TO RESPOND AND SEEK REVIEW

(1) If the District rejects an application for employment, terminates an Independent Contractor, or restricts access of an applicant, employee, Independent Contractor or employee of an Independent Contractor, based on information obtained through a criminal background check, the District shall:

(a) Notify the Applicant, employee, Independent Contractor or employee of an Independent Contractor in writing; and

(b) Give such person an opportunity to respond by filing a written request for review which identifies the reason(s) for review, with the GM within five (5) working days of the written notice; and

(c) The GM shall consider the request for review and schedule and meet with the person that requested such a meeting; and

(d) After consideration of the request for review and a meeting, if requested, the GM shall make a decision on the rejection, termination or restriction. This decision shall be considered final.

13-11 PRIVATE RECORDS

(1) Information obtained through criminal background checks under this Chapter shall be classified and protected from disclosure as “private and protected records,” as described in Sections 9-9 and 9-11 of the P&P.

(2) The information obtained through a criminal background check under this Chapter shall be used only to determine employment, contractor qualification, and access to District works and/or waters.