

# City of Syracuse

Office of Audit  
Nader P. Maroun  
City Auditor

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433 City Hall Syracuse, NY 13202 315-448-8477 Fax: 315-448-8475

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To: The Honorable Ben Walsh, Mayor  
The Honorable Helen Hudson, President  
The Honorable Members of the Common Council

From: Nader P. Maroun

Re: Report on the City of Syracuse “Ban the Box” Ordinance

Date: May 26, 2020

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The attached report presents the results of our review of the City of Syracuse and its Contractors compliance with the “Ban the Box” Ordinance during the calendar years 2019 and 2020 to date, as part of the mandated annual Compliance Audit to be submitted to the Mayor and Common Council.

On December 8th, 2014, the Syracuse Common Council approved the Syracuse Fair Employment and Licensure Ordinance, Chapter 53 of the General Ordinances of the City of Syracuse, enacted by General Ordinance No. 45-2014. The purpose of this article is to ensure that persons with previous criminal convictions have a fair opportunity to obtain employment and licensure in the City of Syracuse, while still affirming the right of the City of Syracuse and its Contractors to deny employment or licensure to applicants when the “direct relationship” or “unreasonable risk” exceptions of Article 23-A of the New York State Correction Law apply (Art. I, Sec. 53-2). This legislation is more commonly referred to as the Syracuse “Ban the Box” Ordinance.

Based on Findings included in the attached report, we recommend the establishment of a small group or committee to handle all matters related to the “Ban the Box” Ordinance, including the provision of a quarterly update to the Common Council on compliance, complaints, legal action, training, etc., regarding the Ordinance. We recommend that the Administration designate one person to be responsible for such coordination.

The management of the City of Syracuse, New York is responsible for the City’s ongoing compliance with and enforcement of the General Ordinances of the City of Syracuse. This essential duty includes establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that the applicable rules and regulations are observed; and that appropriate corrective action is taken in response to audit findings.

# **Ban the Box Audit Report**



**Submitted to:**

**Mayor Ben Walsh**

**and**

**Hon. Members of the Syracuse Common Council**

**May 26, 2020**

**Nader P. Maroun**

**City of Syracuse Auditor**

Compliance Audit of City of Syracuse Ban the Box Ordinance  
Calendar Years 2019 - 2020  
January 1, 2019 to March 31, 2020

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**Introduction:** On December 8th, 2014, the Syracuse Common Council approved the Syracuse Fair Employment and Licensure Ordinance, Chapter 53 of the General Ordinances of the City of Syracuse, enacted by General Ordinance No. 45-2014. The purpose of this article is to ensure that persons with previous criminal convictions have a fair opportunity to obtain employment and licensure in the City of Syracuse, while still affirming the right of the City of Syracuse and its Contractors to deny employment or licensure to applicants when the “direct relationship” or “unreasonable risk” exceptions of Article 23-A of the New York State Correction Law apply (Art. I, Sec. 53-2). This legislation is more commonly referred to as the **Syracuse “Ban the Box” Ordinance.**

### **Background, Policies and Procedures:**

#### **Frequently Asked Questions (FAQ) on “Ban the Box”:**

❖ *What does the Ordinance do?*

- It prohibits the City of Syracuse or its Contractors from asking any criminal history questions during the initial employment application process (Art. I, Sec. 53-3 (F)), including on the employment application, during job interviews and through the extension of a conditional offer of employment (Art. I, Sec. 53-4 (A)).

❖ *To whom does the ordinance apply?*

- It applies to the City of Syracuse and any of its agencies, departments, or offices (Art. I, Sec. 53-3 (C)) and Contractors with the City (Art. I, Sec. 53-3 (D)).

❖ *Does this ordinance prohibit employers from conducting background checks?*

- No. The ordinance does not prohibit a background check if it is done after the initial interview and after the employer has extended a conditional offer of employment (Art. I, Sec. 53-4 (A)).

❖ *Does the “Ban the Box” Ordinance require the City of Syracuse and its Contractors to hire someone with a criminal record?*

- No. The ordinance imposes no requirement on the City of Syracuse or its Contractors to hire someone with a criminal record. However, the law does require the City or its Contractors to wait until after a conditional offer of employment has been extended before making a criminal history inquiry.

❖ ***May the City of Syracuse or a Contractor rescind a conditional job offer?***

- Yes. The City of Syracuse and its Contractors may withdraw a conditional offer of employment based upon the discovery of a criminal record after a proper criminal history inquiry pursuant to the requirements of Article 23-A of the New York State Correction Law, particularly section 752 which sets forth the “direct relationship” and “unreasonable risk” tests, and section 753 which lists the factors that an employer must consider in applying these tests before rescinding a conditional offer. (Art. I, Sec 53-4 (C)).
- If the City of Syracuse or its Contractors rescind a job offer or if the City of Syracuse denies a license because of a Criminal History Report, the City or its Contractors must provide the applicant with a copy of the Criminal History Report and allow the applicant five days to provide information or documentation regarding the inaccuracy or irrelevance of the Report, including information and/or documentation pertaining to the factors in New York State Correction Law section 753 (Art. I, Sec. 53-4 (C) and Art. I, Sec. 53-5 (C)).

❖ ***Are there any exceptions to the Ordinance?***

- The City of Syracuse and its Contractors are excepted from this procedure where they are barred from hiring an individual with certain convictions or violations by other applicable laws (Art. I, Sec. 53-4 (A)).
- This ordinance does not apply to the City of Syracuse Police Department or any “police officer” and “peace officer” positions, as defined by New York State Criminal Procedure Law Sections 1.20 and 2.10, as amended from time to time (Art. I, Sec. 53-8).
- The ordinance does not apply to “inquiries or adverse actions specifically authorized or imposed pursuant to applicable law” (Art. I, Sec. 53-8).

❖ ***How is the Ordinance enforced?***

- The Office of the Auditor of the City of Syracuse shall conduct an annual Compliance Audit reviewing the hiring practices and compliance with this Ordinance by the City and its Contractors (Art. I, Sec 53-7 (A)).
- The City of Syracuse has the authority to suspend or terminate any contract or agreement in violation of the Ordinance (Art. I, Sec. 53-7 (B)).
- The Corporation Counsel of the City of Syracuse may file an action to restrain or prevent any violation of this Ordinance and may further seek penalties of \$500 for initial violations and \$1,000 for each subsequent violation (Art. I, Sec. 53-7 (D)).

- Any aggrieved person may commence a civil action or proceeding against any Contractor of the City of Syracuse for damages or other relief, including reasonable attorney’s fees, within one year of the violation (Art. I, Sec. 53-7 (C), Sec. 53-7 (F)).
- No party or person may recover damages, costs, penalties, or attorney’s fees from or against the City for a violation of this Ordinance. A proceeding commenced pursuant to Article 78 of the New York State Civil Practice Law and Rules shall be the sole remedy available against the City for a violation of this Ordinance (Art. I, Sec. 53-7 (E)).

❖ ***Are there any related laws?***

- Yes. In conducting a criminal history inquiry, the City of Syracuse and its Contractors must comply with Article 23-A of the New York State Correction Law, New York State Executive Law Section 296 (16), entitled “Unlawful Discriminatory Practices.”

**Scope:**

The scope of the audit entailed reviewing City and Contractor compliance with the “Ban the Box” Ordinance during the calendar years 2019 and 2020 to date, as part of the mandated annual compliance audit to be submitted to the Mayor and Common Council.

**Objectives:**

1. Review overall ongoing compliance by the City and its Contractors with the “Ban the Box” Ordinance.
2. Review any City of Syracuse established processes or procedures on regulating and enforcing City and Contractor compliance with the Ordinance.
3. Determine if there have been any questions, concerns, or complaints raised by any of the City’s Contractors regarding compliance with the Ordinance.
4. Determine if the City has received any complaints from an aggrieved party alleging a violation of the Ordinance by the City itself or one of the City’s Contractors.
5. Determine if the City’s Corporation Counsel has had the occasion to act against a Contractor for violation of the Ordinance.
6. Inquire into the status of any formal training for all City Employees involved in the hiring process.
7. Review how accessible information about the provisions of this Ordinance is to City Employees, Contractors, and the public.

**Methodology:** To audit the current level of compliance with the Ban the Box law, the Audit Department sampled employment applications of current City Contractors and emailed key City personnel:

1. **Sampling of Contractor Employment Applications:** We sampled current City Contractors to determine whether Ban the Box provisions relative to employment applications were being complied with.
2. **Emails:** We sent emails to officials who are responsible for City employment and purchasing functions to determine if there are any City established processes or procedures on regulating and enforcing City and Contractor compliance with the Ordinance.
  - a. City Assistant Corporation Counsel Catherine Carnrike
  - b. City Budget Director Mary Vossler
  - c. City Assistant Personnel Director Donna Briscoe

**Findings & Recommendations:**

The results of our audit can be summarized as follows:

**Finding 1: No annual compliance audits completed after the initial audit report submitted to the Mayor and Common Council on January 5, 2016**

As mandated by Art. I, Sec 53-7 (A) of the Ordinance, the Office of the City Auditor “shall conduct an audit reviewing the hiring practices and compliance with this Ordinance by the City and its Contractors.” The initial audit report reviewed the City’s implementation of the “Ban the Box” Ordinance from its effective date of March 25, 2015 through December 30, 2015. However, an annual Compliance Audit has not been conducted since that initial report. Consequently, in conducting this audit, we have encountered a general sense of uncertainty regarding the overview, follow-up, and enforcement of the Ordinance during the last four years.

**Finding 1: Recommendations:**

- Commencing with this Compliance Audit, the Office of the City Auditor will conduct a similar annual Compliance Audit, at a set point in time to be determined, ensuring proper internal controls are in place on all matters related to the Ordinance.

### **Finding 2: Enforcement Actions Taken**

There have been no known complaints from aggrieved parties or legal actions taken regarding violation of the Ordinance. Accordingly, there are no findings relative to the administration of the enforcement provisions of the Ordinance.

### **Finding 2: Recommendations:**

- Establishment of a small committee/group to handle all matters related to the Ban the Box Ordinance.
- The committee will coordinate overview, training, enforcement, and compliance follow-up to ensure proper internal controls are in place.
- The committee will provide a Quarterly Update to the Common Council on compliance, complaints, legal action, training, etc., regarding the Ordinance.
- The Administration should designate one person to be responsible for coordination of the committee.

### **Finding 3: City Vendor Employment Applications**

This office selected a random sample of 100 City Contractors who supplied goods and services to the City during the calendar years 2019 and 2020 to date. In a letter dated March 19, 2020 (Appendix A), these Contractors were requested to submit a copy of their current employment application forms no later than April 2, 2020, to determine if they were in compliance with the Ban the Box law. A follow-up letter dated April 3, 2020 was sent to Contractors who had not yet responded, which extended the deadline to April 13, 2020 (Appendix B).

Considering the current situation surrounding the COVID-19 pandemic, we did not anticipate a strong vendor response rate. However, we did receive a response from 53 of the 100 Contractors who received the letter, which is remarkable considering the unprecedented measures that have been put in place during the COVID-19 battle.

Of the 53 Contractors who responded, 2 are currently not in compliance with the Ordinance, based on their employment applications still containing a question regarding the applicant's criminal history. Based on this sample, a vendor non-compliance rate of 4-5% is reasonable.



**Finding 3: Recommendations:**

- As noted above, 47 current City Contractors did not reply to our Office’s request to provide current application forms. Considering the current COVID-19 pandemic, it is highly likely many of them have not had an opportunity to read the request letter. It is therefore unknown if these Contractors are compliant with the Ban the Box Ordinance. We expect to see more vendor responses arrive in conjunction with the phased re-opening of businesses. We recommend, with assistance from our Office initially, that ongoing follow-up with these Contractors, in conjunction with quarterly vendor compliance sampling, be handled by the Ban the Box committee.
- Regarding the 2 current City Contractors found in violation of the Ordinance, we recommend that they receive a letter from the City’s Corporation Counsel with notification that they need to bring their respective applications into compliance with the Ordinance, or risk imposition of monetary penalties and/or loss of City business, at the discretion of the Corporation Counsel (Art. I, Sec. 53-7 (B)), (Art. I, Sec. 53-7 (D)).

**Finding 4: Lack of readily available listing of City of Syracuse Contractors**

As mandated by Art. I, Sec. 53-7 (H) of the Ordinance, the City “shall make information about the provisions of this Ordinance available to the public and its Contractors.” An essential piece of information, especially for potential job applicants, is a list of employers who currently contract with the City of Syracuse. A frequently asked questions (FAQ) document had been drafted shortly after approval of the “Ban the Box” Ordinance. In response to the FAQ “How Will a Job Applicant Know if an Employer is a Contractor with the City?”, the draft document states that a “list of employers who currently contract with the City of Syracuse can be found online at:\_\_\_\_\_”. The blank space at the end of this FAQ response shows intention by the City to post online a readily accessible list of available Contractors. During our research however, we were unable to locate this list online.

**Finding 4: Recommendations:**

- Currently, the use of PeopleSoft is the City's method for looking up the City's Contractors. We strongly recommend that a user-friendly listing of the Contractors be created **(that includes the Vendor's email address, for ease of managing future correspondence and assisting the proposed Ban the Box group/committee in successfully interacting with the Contractors)**, updated on a real-time basis and posted on the City of Syracuse website.

**Finding 5: Background Check Policy Training Conducted**

The initial Ban the Box Audit Report submitted on January 5, 2016 had found that there had been no formal training to date of City Department Heads or other employees regarding their responsibilities under the Ban the Box Ordinance. City Assistant Personnel Director Donna Briscoe confirmed that former City Personnel Director Derrick Thomas provided Background Check Policy Training for all Department Heads on November 22, 2016, which incorporated Ban the Box responsibilities (Appendix C). Donna Briscoe also confirmed that the City only does background checks once an offer of employment is made and only for identified positions in each Department. All City employment applications include an explicit reference to the Ban the Box Ordinance (Appendix D).

**Finding 5: Recommendations:**

- Formal Background Check Policy Training be made available, as resources allow, for City Department Heads and all City employees who may possibly be involved in the hiring process. Donna Briscoe stated that she does not know if former City Personnel Director Bob Stamey continued to provide this Training after the current City Administration took office, but she herself has not since taking over last year. Donna will bring this recommendation to the City's Professional Development Specialist and ask that it be put in the supervisory training rotation.

**Management Response:**

Thank you for the opportunity to respond to the recommendations made in the referenced report. The Administration appreciates the spirit of collaboration that guided your inquiries and looks forward to working with your office and other stakeholders to ensure that the requirements of the Ordinance are appropriately met. There are clearly improvements to be made, but we think there is a clear path ahead.

**City Auditor's Response:**

We wish to thank City Department Heads and staff for their prompt and thorough assistance in compiling the information needed to complete this audit and look forward to the next annual review of this program.



## **OFFICE OF THE CITY AUDITOR**

CITY OF SYRACUSE, CITY AUDITOR NADER P. MAROUN

March 19, 2020

**DUPLI ENVELOPE & GRAPHICS**  
6761 THOMPSON ROAD  
SYRACUSE, NY 13211

Greetings:

Pursuant to City General Ordinance No. 45-2014, any contractor supplying goods and services to the City must comply with the Syracuse Fair Employment and Licensure Ordinance, commonly referred to as the Syracuse "Ban the Box" Ordinance.

Among its various provisions, this Ordinance prohibits any contractor from directly or indirectly inquiring into the criminal history of a job applicant for employment until after a conditional offer of employment is made.

Our office is mandated to conduct a compliance audit reviewing the hiring practices and compliance with the aforementioned Ordinance by the City and its contractors, and submit an annual report to the Mayor and Common Council detailing compliance with the "Ban the Box" Ordinance.

Your firm has been randomly selected from a list of contractors that have received payment from the City during the calendar years 2019 and 2020.

In accordance with this audit, our office is requesting a copy of your current official employment application, sent via email to [mguckert@svr.gov.net](mailto:mguckert@svr.gov.net), no later than April 2nd, 2020.

Thank you in advance for your timely assistance and cooperation.

Thank you,

Nader Maroun

**Office of the City Auditor**  
233 E. Washington St.  
City Hall, Room 431  
Syracuse, N.Y. 13202

Office (315) 448-8477  
Fax (315) 448-8475

**Appendix B:**



**OFFICE OF THE CITY AUDITOR**

CITY OF SYRACUSE, CITY AUDITOR NADER P. MAROUN

April 3, 2020

DUPLI ENVELOPE & GRAPHICS  
6761 THOMPSON ROAD  
SYRACUSE, NY 13211

Greetings:

The City of Syracuse recognizes the difficult and unprecedented times we all are living in. Governor Cuomo issued the new "Put New York on Pause" order, mandating all non-essential businesses statewide must close in-office personnel functions effective at 8PM on Sunday, March 22<sup>nd</sup>, 2020. As a result, we understand and sympathize with the difficult situation many businesses currently face. It's very possible and likely you have not seen the initial request from our office, as follows:

*Pursuant to City General Ordinance No. 45-2014, any contractor supplying goods and services to the City must comply with the Syracuse Fair Employment and Licensure Ordinance, commonly referred to as the Syracuse "Ban the Box" Ordinance.*

*Among its various provisions, this Ordinance prohibits any contractor from directly or indirectly inquiring into the criminal history of a job applicant for employment until after a conditional offer of employment is made.*

*Our office is mandated to conduct a compliance audit reviewing the hiring practices and compliance with the aforementioned Ordinance by the City and its contractors, and submit an annual report to the Mayor and Common Council detailing compliance with the "Ban the Box" Ordinance.*

*Your firm has been randomly selected from a list of contractors that have received payment from the City during the calendar years 2019 and 2020.*

In accordance with this audit, our office had mailed a letter on March 19<sup>th</sup>, 2020, requesting a copy of your current official employment application, to be sent via email to [mguckert@syrgov.net](mailto:mguckert@syrgov.net) no later than April 2<sup>nd</sup>, 2020. Due to the current real world issues facing all of us, we are extending the deadline to receive a copy of your employment application to April 13<sup>th</sup>, 2020. We realize this may not be possible right now and appreciate the situation your business faces. In that case, just respond when you're able in the future.

Thank you in advance for your timely assistance and cooperation.

Thank you,

Nader Maroun

Office of the City Auditor  
233 E. Washington St.  
City Hall, Room 431  
Syracuse, N.Y. 13202

Appendix C:

# City of Syracuse

Background Check Policy

Training

By Derrek Thomas, Esq.

November 22, 2016



**Appendix D:**

**EDUCATIONAL RECORD \*Attach additional sheets if more space is needed.**

	Name of School	Location	Graduated yes/no	Degree Received	Major	Degree Date
High School						
College						
Graduate School						
Vocational/Technical						
Other						

Do you have a license, certification, or other authorization to practice a trade or profession? Yes  No   
 If yes, please explain: \_\_\_\_\_

**WORK HISTORY (Start with most recent position) \*Attach additional sheets if more space is needed.**

1 From \_\_\_\_\_ To \_\_\_\_\_ Position \_\_\_\_\_ Hrs. Per Week \_\_\_\_\_  
 Firm \_\_\_\_\_ Address \_\_\_\_\_  
 Supervisor \_\_\_\_\_ Duties \_\_\_\_\_  
 \_\_\_\_\_  
 Reason For Leaving \_\_\_\_\_

2 From \_\_\_\_\_ To \_\_\_\_\_ Position \_\_\_\_\_ Hrs. Per Week \_\_\_\_\_  
 Firm \_\_\_\_\_ Address \_\_\_\_\_  
 Supervisor \_\_\_\_\_ Duties \_\_\_\_\_  
 \_\_\_\_\_  
 Reason For Leaving \_\_\_\_\_

3 From \_\_\_\_\_ To \_\_\_\_\_ Position \_\_\_\_\_ Hrs. Per Week \_\_\_\_\_  
 Firm \_\_\_\_\_ Address \_\_\_\_\_  
 Supervisor \_\_\_\_\_ Duties \_\_\_\_\_  
 \_\_\_\_\_  
 Reason For Leaving \_\_\_\_\_

**BACKGROUND INVESTIGATION:** Applicants may be required to undergo a criminal history background investigation. Failure to pass a background investigation may result in denial of employment. Pursuant to the Syracuse Fair Employment and Licensure Ordinance ("Ordinance"), the City does not conduct criminal history background checks during the application process until after an applicant is deemed qualified for a position and such applicant has been extended a conditional offer of employment, with the exception of the following: 1.) positions in which the City is barred from hiring an individual with certain convictions; 2.) the Syracuse Police Department or any "police officer" and "peace officer" positions; and 3.) inquiries specifically authorized pursuant to applicable law. Pursuant to the Ordinance and New York State law, an applicant may not be denied employment because of a prior criminal record, unless there is a direct relationship between the offense and the employment sought or unless hiring would constitute an unreasonable risk.

**DECLARATION:** I declare that, subject to penalties of perjury, any statements made on or in connection with this application (including statements made in accompanying papers) have been examined by me and to the best of my knowledge are true and correct. I understand that any deliberate misrepresentation or omission of facts may be cause for voiding this application or termination of employment, unless otherwise prohibited by law. I also understand that all statements made in connection with this application are subject to verification.

**APPLICANT'S SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_

<b>DEPARTMENT USE ONLY:</b> Interviewer: _____ Date: _____ Disposition: _____ Additional Information: _____
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