

## Syracuse Common Council Passes “Ban the Box” Ordinance

On December 8, the Syracuse Common Council voted 8-1 to pass a [“Ban the Box” ordinance](#). If the ordinance is signed by the Mayor (or if the Mayor’s veto is overridden by the Common Council), the ordinance would prohibit the City of Syracuse and persons or entities that provide goods or services under contract with the City from asking a job applicant about criminal convictions unless and until the applicant has already received a conditional job offer.

In passing the ordinance, Syracuse joins at least 60 cities (including [Buffalo](#) and [Rochester](#)) and 13 states that have taken steps to remove the criminal history question on a job application and delay the background check until later in the hiring process. The prohibition, in theory, will enable ex-convicts to exhibit their qualifications for a job before being asked about their criminal histories. As a result, lawmakers hope that this will present opportunities for ex-convicts to obtain employment and thereby reduce the likelihood of criminal recidivism.

Syracuse’s version, as mentioned above, applies only to the City itself and any “person, vendor, business enterprise or entity that enters into a service contract or concession agreement with the City, or otherwise supplies goods and/or services to, or on behalf of, the City.” Thus, under the ordinance, neither the City nor its contractors may inquire into an applicant’s criminal history until a conditional offer of employment has been extended. After a conditional job offer has been extended, an applicant’s criminal record can be investigated, but the job offer may be rescinded only if it is done in accordance with the provisions of [Article 23-A of the New York Correction Law](#). Thus, the City and its contractors may rescind a conditional job offer on the basis of a prior criminal conviction only if hiring the applicant would pose an unreasonable risk to property or safety, or if the conviction bears a direct relationship to the job.

If a contractor subject to the ordinance is considering rescinding a conditional job offer based on the applicant’s criminal record, the ordinance would require the contractor to send a notice to the applicant that includes the relevant Criminal History Report and highlights the convictions that warrant a rescission of the conditional offer. If the applicant so chooses, within five days of receiving this notice, he or she can then submit a rebuttal, challenging the accuracy and relevance of the Report. The contractor is then required to review the rebuttal, and any information contained within it, before making a final decision.

The ordinance does not apply to the City of Syracuse Police Department or to any “police officer” and “peace officer” positions. In addition, the ordinance would give the Mayor of the City of Syracuse the power to temporarily suspend the applicability of the ordinance to any contractor or prospective contractor for up to three months if there is a specific exigent circumstance or public emergency condition that justifies such an action.

The incarnation of the ordinance that passed is markedly less sweeping than its failed predecessors, which would have applied the prohibition to all employers within the City of Syracuse. Mayor Stephanie Miner has yet to say whether she will veto the ordinance. If she does veto the ordinance, the veto could be overridden if at least six members of the Common Council vote to do so. If the ordinance is ultimately approved, either with the Mayor’s signature or an override of her veto, it will take effect 90 days after it is passed.

The ordinance will have a significant impact on City of Syracuse contractors if and when it goes into effect, in no small part because of the civil action authorized by the ordinance against any contractors who are alleged to be in violation of the ordinance. The ordinance also provides that the court may allow the party commencing such an action against a contractor to recover costs and reasonable attorneys’ fees as part of the relief granted. City of Syracuse contractors should fully acquaint themselves with the particulars of the ordinance, train all personnel involved in the hiring process to avoid once-standard criminal history inquiries until after the interview is complete and a conditional job offer has been extended, and review job applications and other documents used in the hiring process (including online questionnaires) to ensure compliance.

To learn more, contact [Subhash Viswanathan](#) at (315) 218-8324 or [suba@bsk.com](mailto:suba@bsk.com).



Bond, Schoeneck & King PLLC (Bond, we, or us), has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences.

For information about our firm, practice areas and attorneys, visit our website, [www.bsk.com](http://www.bsk.com). • Attorney Advertising • © 2014 Bond, Schoeneck & King, PLLC

CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC

FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM