



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso

**SUBJECT: FEDERAL CRIMINAL
BACKGROUND CHECKS FOR
EMPLOYEES AND VOLUNTEERS**

DATE: 03-05-08

Approved

Christine J. Shippy

Date

3-24-08

COUNCIL DISTRICT:

SNI AREA: _____

RECOMMENDATION

Adoption of a resolution authorizing the City to access state and federal level summary criminal history information through the California Department of Justice for employment and volunteer purposes, and for licensing or certification purposes.

OUTCOME

The adoption of this resolution will provide the California Department of Justice (DOJ) with the City Council's authorization to access federal criminal background records. Checking federal criminal background records for employees and volunteers working with youth exceeds the requirement specified under California Public Resources Code Section 5164; however, it is recommended that the City adopt this resolution as a matter of due diligence since the law allows federal background checks on employees and volunteers.

BACKGROUND

Currently, the Human Resources and Parks, Recreation, and Neighborhood Services (PRNS) Departments have accounts with the California Department of Justice (DOJ) to administer fingerprinting and criminal history checks for employees and volunteers. By default, the criminal history reports that the City receives from the DOJ provide summary state and local criminal history information. However, federal criminal history information is also recommended, though not required, for certain employees and volunteers assigned to positions that have supervisory or disciplinary authority over minors. This additional federal information is recommended for situations in which an individual has a disqualifying criminal record in a state other than California.

The federal criminal history information is currently being reported back to the City by the DOJ for volunteers working with minors, but it was recently discovered that the City has not been receiving all of the federal criminal background information requested for parks, recreation and other employees due to the lack of an enabling resolution by the City Council.

ANALYSIS

In subsequent discussions with the DOJ and the City Attorney's Office, it was determined the City Council needed to adopt a resolution specifically authorizing the DOJ to provide federal criminal history information for employment eligibility verification purposes.

California Penal Code Sections 11105(b)(10) and 13300(b)(10) provide that cities and other agencies may have access to California Department of Justice criminal history information for employment purposes when that information is needed to comply with a statute, ordinance, or regulation that expressly refers to specific criminal conduct. For the same purposes, these sections provide that the City may also obtain access to federal criminal background information from the Federal Bureau of Investigations (FBI).

Relevant to these provisions, California Public Resources Code Section 5164 prohibits a city, county, or special district from hiring an employee or volunteer that has been convicted of certain criminal offenses if the employee or volunteer will perform services at park and recreational facilities and have supervisory or disciplinary authority over minors.

Until recently, the City believed that all necessary measures were taken to access federal criminal background information for parks, recreation, and other employees and volunteers working with minors. With that understanding, the City has been securing criminal history information through the DOJ's normal administrative processes. In that pursuit, it came to light that the City has not been receiving all of the federal criminal background information requested. Because the City lacked a City Council resolution authorizing receipt of federal criminal background information, the DOJ has not provided this information for employees, though it has provided the information for volunteers working with minors.

This resolution would not apply to City vendors. Although criminal history background checks are required for vendor employees who have supervisory or disciplinary authority over minors, the City requires the vendor to obtain this information as a condition for doing business with the City. The requirement is incorporated in each vendor contract when applicable.

PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This Council Memo will post to the City's website City Council Agendas and Synopses for public viewing for the April 8, 2008 Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the Human Resources Department, and the City Manager's Office.

FISCAL/POLICY ALIGNMENT

This recommendation is in alignment with Neighborhood Services CSA mission outcomes including Safe and Clean Parks, Facilities and Attractions; Vibrant Cultural, Learning and Leisure Opportunities; and Healthy Neighborhoods and Capable Communities.

COST IMPLICATIONS

Not applicable.

CEQA

Not a Project.


ALBERT BALAGOSO
Director, Parks, Recreation and
Neighborhood Services

RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
JOSE AUTHORIZING ACCESS TO SUMMARY CRIMINAL
HISTORY INFORMATION FOR EMPLOYMENT,
LICENSING OR CERTIFICATION PURPOSES**

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties and districts to access state and local summary criminal history information for employment, licensing or certification purposes; and

WHEREAS, Penal Code Section 11105(b)(11) authorizes cities, counties and districts to access federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(10) require the City Council, Board of Supervisors, or governing body of a City, County or District to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

- A. The City of San José is hereby authorized to access state and federal level summary criminal history information for employment (including volunteers and

contract employees), licensing, or certification purposes and may not disseminate the information to a private entity; and

- B. The City of San José shall not consider a person who has been convicted of a felony or misdemeanor involving moral turpitude eligible for employment (including volunteers and contract employees), or licensing; except that such conviction may be disregarded if it is determined that mitigating circumstances exist, or that the conviction is not related to the employment, volunteer or license in question.

ADOPTED this ____ day of _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk