



City of Commerce, California
Human Resources Policy and Procedure Manual

Approved:

Laura McAllister
Director of Human Resources
Andrey Olivieri
City Administrator

Number: I-14 Effective Date: 05/15/07

SUBJECT: CRIMINAL BACKGROUND AND LIVE SCAN POLICY

PURPOSE:

To establish a policy to ensure that the City of Commerce, its employees, volunteers, and members of the public are protected and to help minimize potential liability to the City. The City Council has adopted a resolution authorizing the Human Resources Department to obtain State summary criminal background information from the Department of Justice for employment purposes. The City desires to identify those employees, prospective employees and volunteers who have a criminal history so that such information may be used in employment decisions.

POLICY:

1. Authority - Under federal and state law, public agencies may enact policies that disqualify applicants with certain criminal convictions from employment positions if the conviction is relevant to the position in question. Furthermore, California Penal Code Section 11105 permits cities to obtain state summary criminal background information from the Department of Justice if the City Council has authorized such access and if the criminal background information is required to implement a statute, ordinance or regulation that contains requirements or exclusions based on specified criminal conduct. The City Council authorized the City to access such information pursuant to Resolution Number 01-51.
2. General - The City shall not consider for employment a person or volunteer who has been convicted of a felony or a misdemeanor involving moral turpitude (see Section 4 for specific penal code convictions). A report of prior conviction or subsequent conviction shall be cause for termination of any employee or volunteer, if the subject felony or misdemeanor is for a crime specified in Section 4, or is determined by the City to be substantially similar in nature to those specified in Section 4. The conviction may be disregarded if it is found and determined by the appointing authority that mitigating circumstances exist, such as, but not limited to, evidence of rehabilitation, length of time elapsed since such conviction, the age of such person at the time of conviction, or the fact that the classification applied for is unrelated to such conviction, and federal or state law does not require such disqualification or termination. Nothing in this policy shall be deemed to deny employees their appeal rights under their Memorandum of Understanding.
3. Criminal Record Background Checks - The City shall obtain criminal background information pursuant to the procedures set forth below on all prospective employees and volunteers, all current employees and volunteers who work with or

supervise minors, and all employees formally considered for promotion who have not been previously live scanned.

4. Specific Convictions and Positions

A. With respect to all prospective employees, current employees and volunteers, a conviction of any of the following Penal Code sections, shall be grounds for disqualification or termination:

- Section 68: Asking for or receiving bribes
- Section 72: Presentation of fraudulent claims
- Section 73, 74: Bribes for appointment to office
- Section 187, 189: Murder
- Section 192: Manslaughter; voluntary, involuntary, and vehicular
- Section 203: Mayhem
- Section 209: Kidnapping for ransom, extortion or robbery
- Section 211: Robbery - taking personal property in possession of someone by force or fear

- Section 245: Assault with a deadly weapon
- Section 261: Rape
- Section 459: Burglary
- Section 484: Theft
- Section 490.5: Shoplifting
- Section 503: Embezzlement - fraudulent appropriation of property by a person to whom it has been entrusted
- Section 518: Extortion - obtaining property by a wrongful use of force or fear or under a color of official right

B. With respect to all applicants for and current employees and volunteers in positions who work with or supervise minors, in addition to "A" above, a conviction of any of the following code sections shall be grounds for disqualification or termination:

1. Violations or attempted violations of Penal Code Sections 220, 261.5, 262, 273a, 273d, or 273.5, 288, or any sex offense listed in Section 290.
2. Any crime described in the California Uniform Controlled Substances Act (Division 10 [commencing with Section 11000] of the California Health and Safety Code).
3. Any felony or misdemeanor conviction within 10 years of the City's request for background information for a violation or attempted violation of Chapter 3 of Title 8 of the Penal Code (commencing with Section 207), Sections 211 to 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 of Title 8 of the Penal Code (commencing with Section 236), Chapter 9 (commencing with Section 240), and for violation of any of the offenses specified in subdivision (c) of Section 667.5.
4. Any felony or misdemeanor conviction under Penal Code Section 311, et seq., photographic use of children relative to sexual conduct.

C. With respect to all applicants for current employees and volunteers in positions

that work with public funds or public records, in addition to "A" above, a conviction of any of the following Penal Code sections shall be grounds for disqualification or termination:

- Section 115, 115.3: Use of a false or forged public record or alteration of a certified copy of a public record
- Section 424: Embezzlement and falsification of accounts
- Title 13, Chapter 4: Any violation of forgery and counterfeiting

5. Responsibility of Applicant, Employee or Volunteer - It is the responsibility of an applicant, employee, or volunteer to report to the City, any conviction or arrest pending final adjudication on any code violations in Section 4 above. The information shall be included on all employment applications. Arrest pending final adjudication means an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial, pursuant to Labor Code 432.7(a). If any convictions or arrests pending final adjudication occur while the employee or volunteer is working for the City, the employee or volunteer shall report that information to his or her Department Head or designee and the Human Resources Director if said conviction or arrest has the potential to affect the employee or volunteer's position of employment, fellow employees or the public. Alternatively, the employee or volunteer may report the information directly to the Human Resources Director.

6. Procedure for Criminal Background Records Checks

- A. Criminal record checks conducted pursuant to this policy shall comply with applicable federal and state law and the following:

1. The City shall submit a completed Applicant Fingerprint Card to the Department of Justice accompanied by any other forms or information required by the Department of Justice in order to obtain the criminal background information.
2. Any information obtained from the Department of Justice shall be used to determine whether the applicant, employee or volunteer is disqualified or subject to termination pursuant to this policy.
3. The City may hire a prospective employee contingent upon the results of the criminal background information received during the employee's probationary period. Any employee, including an employee hired pending the receipt of criminal background information, will be terminated if the employee is found to have falsified or omitted criminal background information on the employee application.
4. Every employee or volunteer who has been hired or promoted subsequent to the adoption of this policy, who passed the initial screening, must sign an acknowledgment that conviction of crimes listed herein or determined to be substantially similar by the City shall be grounds for disciplinary action up to and including termination.

- B. The City shall enter into a contract with the Department of Justice to obtain any

subsequent conviction or arrest information concerning an employee or volunteer.

1. Any information about an existing employee's or volunteer's conviction(s) shall be reported to the Human Resources Director.
2. Upon receipt of information regarding a conviction and/or arrest pending final adjudication, the Department Head or designee, the City Administrator, the Human Resources Director and the City Attorney shall evaluate the effect and potential effect of the employee's or volunteer's record or arrest on his or her position of employment, fellow employees and the public and shall take appropriate action to maximize public safety and minimize potential liability while respecting the rights of the employee or volunteer.

Upon discovery of any risk of greater liability to the City, employees and/or the public, the appointing authority may suspend, with the approval of the City Administrator, any full-time Civil Service or non-Civil Service employee with pay up to eighty (80) hours in accordance with the Paid Administrative Leave Policy. All full-time Civil Service employees are entitled to a proceeding in accordance with the Skelly process before the imposition of any disciplinary actions. Part-time employees may appeal disciplinary actions to the City Administrator; however this does not alter their employment status to be anything other than at-will.

Part-time employees may be placed on unpaid leave and upon final court discovery, if an employee is exonerated of all charges, said employee shall be entitled to their average pay based upon the preceding ten weeks not to exceed a total of 80 hours.

3. If the City finds that an employee or volunteer has failed to report a conviction or arrest pending final adjudication on the above penal codes, the appropriate disciplinary action, up to and including termination, will be taken.
-
7. Confidentiality - State summary criminal history information is confidential and shall not be disclosed, except to the Department Head, City Attorney and City Administrator. The Director of Human Resources or designee, having access to such information shall sign a form acknowledging that the information is confidential and that civil and criminal penalties, as well as dismissal from employment, may result if the confidential information is misused.

Pursuant to Penal Code Section 11077, the Attorney General is responsible for the security of Criminal Offender Record Information (CORI), and has the authority to establish regulations to assure the security of CORI from unauthorized disclosures. The following are requirements as prescribed by the State of California, Department of Justice, Bureau of Criminal Identification and Information, Field Operations and Record Security for any agency that maintains or receives criminal history information:

- A. Records Security - Any inquires regarding the release, security or privacy of Criminal Offender Record Information (CORI) is to be resolved by the Human Resources Director or his or her designee.

- B. Record Storage - CORI shall be under lock and key and accessible only to the Department Head or his or her designee who shall be committed to protect CORI from unauthorized access, use or disclosure. Fingerprint records such as fingerprint cards, "no criminal history" notifications and CORI history shall be destroyed by shredding once a hiring decision or volunteer qualification/disqualification determination has been made.
- C. Record Dissemination - CORI shall be used only for the purpose for which it was requested by the hiring department.
- D. Record Destruction - Upon determination of employment, CORI and copies of the same shall be destroyed to the extent the identity of the person can no longer be reasonably ascertained.
- E. Record Reproduction - CORI may not be reproduced for dissemination.
- F. Training - The Department Head and employees with access to CORI are required:
 - 1. To read and abide by this policy.
 - 2. To have on file a signed copy of the Employee Statement Form for the Use of Criminal Record Information, which acknowledges an understanding of laws prohibiting misuse of CORI.
- G. Penalties - Misuse of CORI is a criminal offense. Violation of this policy regarding CORI may result in suspension, dismissal and/or criminal or civil prosecution.

PROCEDURE:

Responsibility	Action
Hiring or Promoting Department	1. Selects applicant and offers employment, or selects employee and offers promotion, based on successful background checking.
Human Resources Director or Designee	2. Processes fingerprints and submits to Department of Justice. 3. Makes determination based on report and informs the City Administrator, City Attorney and the Department Head.
City Attorney and Department Head	4. In consultation with Human Resources Director, and the City Administrator, only if disqualification or termination is not required by law, determines whether any mitigating circumstances exist that permits

Human Resources Director

disregard of the conviction or, for an applicant for promotion, discipline less than termination.

5. Continues with the hiring or promotion process if the report is acceptable or sufficient mitigating circumstances are found.
6. Sends disqualification letter if background on applicant for hire or promotion is unacceptable.
7. If the report is not acceptable and sufficient mitigating circumstances are not found, initiates in consultation with the City Attorney, the City Administrator and the Department Head, to determine action to be taken against applicant.