



# staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Leo L. Mingle, Jr., Assistant City Manager

SUBJECT: Consideration and possible action to Adopt Resolution No. 16-XX - A Resolution establishing policy for conducting employee criminal background checks, securing received criminal offender record information, and rescinding Resolution No. 09-48.

DATE: May 9, 2016

## **EXECUTIVE SUMMARY**

The proposed Resolution will establish policy for conducting employee criminal background checks and securing received criminal offender record information.

## **RECOMMENDATION TO CITY COUNCIL**

- 1) Adopt Resolution No. 16-XX; or
- 2) Alternatively, discuss and take other action related to this item.

## **FISCAL IMPACT**

There is no fiscal impact at this time.

## **DISCUSSION**

The City Manager will implement the policy.

The policy is being updated to reflect current legal standards for application of information obtained as a result of criminal background checks, specifically including “Those employees and volunteers who are subsequently convicted or arrested pending adjudication for criminal conduct will be evaluated on a case-by-case basis. Those convicted for a proscribed criminal act will be terminated; those arrested pending adjudication for a proscribed criminal act will be suspended from duty without pay pending the City’s determination of their employment status.”

## **ATTACHMENT**

Resolution No. 16-XX.....2

**CITY OF BELLFLOWER**

**RESOLUTION NO. 16-XX**

**A RESOLUTION ESTABLISHING A POLICY FOR CONDUCTING  
EMPLOYEE CRIMINAL BACKGROUND CHECKS AND  
SECURING RECEIVED CRIMINAL OFFENDER RECORD  
INFORMATION**

**THE CITY COUNCIL RESOLVES AS FOLLOWS:**

**SECTION 1.** The City Council finds and declares as follows:

A. **Purpose.** This Resolution is enacted in order to establish a policy and procedures governing the conduct of criminal background checks, including fingerprinting, of full- and part-time employees and volunteers, the automatic enrollment of such employees in the California Department of Justice's (DOJ) Applicant Processing Program, and the use, access to, maintenance, confidentiality and destruction of Criminal Offender Record Information (CORI) received. Recognizing the intrusive nature of such checks, and the right to privacy of the City's employees and volunteers, this policy establishes safeguards to protect their privacy and the confidentiality of records disclosed to the City.

B. **General.** The City has developed a strong organizational risk management program. An essential component of this program involves recognizing, and taking steps to mitigate, those risks. In order to mitigate the risk of employing persons with undisclosed histories of criminal misconduct, the City conducts criminal background checks as described in paragraph C below.

Section 5164 of the California Public Resources Code minimally requires that criminal background checks, including fingerprinting, be conducted on employees hired on or after the effective date of that section (January 1, 1998) who have supervisory or disciplinary authority over minors.

1. While the law applies only to new hires, and while the City possesses high confidence in the integrity of its employees and volunteers, the risk posed by existing employees and volunteers with undisclosed or concealed criminal histories is substantial, both in terms of civil liability and resulting financial loss, and, more importantly, the loss of the trust and confidence of the community. The City has a significant interest in ensuring that all of its employees and volunteers are trustworthy and reliable. Therefore, "good faith" and "due diligence" require that the City ensure the integrity of its entire workforce.

2. Given the size of the City's workforce, its current organization, and the extent to which the City's employees and volunteers interact with and serve minors, virtually every full- and part-time employee of the City, as well as many of the City's volunteers, can reasonably be expected to have supervisory or disciplinary authority over minors. While such authority is most commonly exercised by employees and volunteers of the Parks and Recreation Department, it is also exercised by senior managers, Public Works staff regularly assigned to park maintenance, Public Works staff assigned as needed to special events, Community Services Officers and Community Development Inspectors who work in the field, and clerical and mid-management staff that work with or have contact with

part-time employees and volunteers who are minors.

3. Fingerprinting of individuals is a relatively slight intrusion on the right of privacy, and is justified where it is reasonably related to a legitimate state interest. *Schmidt v. Superior Court*, 48 Cal.3d 370 (1989).

**C. Applicability.** All employees and certain designated volunteers are deemed likely to have direct contact with and/or supervisory authority over minors in the course of their normal employment. The City must obtain criminal background information on all employees and designated volunteers.

1. **Job Applicants.** As a part of their application process, all job applicants are required to disclose any criminal history and provide fingerprints necessary to perform a background check by the DOJ.

2. **Designated Volunteers.** Designated volunteers are required to disclose any criminal history and provide fingerprints necessary to perform a background check by the DOJ. "Designated volunteers" are applicants for volunteer positions and current volunteers who: (1) are in positions identified by Government Code section 5164, or (2) are deemed likely, in the sole discretion of the City Manager or designee, to have direct contact with and/or supervisory authority over minors in the normal course of their employment.

3. **Employees Without Background Check.** Employees who did not provide fingerprints their time of hire must provide fingerprints necessary to perform a background check by the DOJ immediately, except that full-time employees not employed in the Parks and Recreation Department and with more than 15 years of service as of November 15, 2005 will not be fingerprinted.

4. **DOJ Applicant Processing Program.** All employees and designated volunteers, with the exception of employees exempt from fingerprinting under paragraph C3, will be enrolled in the DOJ Applicant Processing Program. The City will receive a confidential notification concerning the subsequent arrest or conviction of any enrolled employee or volunteer. Upon termination of employment, the Human Resources and Risk Manager will contact the DOJ and remove the employee/volunteer's name from the system.

**D. Proscribed Criminal Conduct.** The City will not hire or continue to employ any person convicted or arrested pending adjudication for any of the following criminal acts (all citations are from the California Penal Code and the California Health and Safety Code):

1. **Crimes of Moral Turpitude.** Crimes of moral turpitude within ten years of the date of application or hiring:

- a. Penal Code § 68: Asking for or receiving bribes.
- b. Penal Code § 72: Presentation of fraudulent claims.
- c. Penal Code §§ 73, 74: Bribes for appointment to office.

- d. Penal Code §§ 187, 189: Murder.
- e. Penal Code § 209: Kidnapping for ransom, extortion or robbery.
- f. Penal Code § 211: Robbery: taking personal property in possession of someone by force or fear.
- g. Penal Code § 245: Assault with deadly weapon.
- h. Penal Code § 261: Rape.
- i. Penal Code § 451: Arson of structure, forestland or property.
- j. Penal Code § 459: Burglary.
- k. Penal Code § 484: Theft.
- l. Penal Code § 503: Embezzlement, fraudulent appropriation of property by a person to whom it has been entrusted.
- m. Penal Code § 518: Extortion, obtaining property by a wrongful use of force or fear or under color of official right.

**2. Supervisory or Disciplinary Authority over Minors.** In addition to the above, for positions having supervisory or disciplinary authority over minors:

- a. Violations or attempted violations of Penal Code sections 220 (Assault with intent to commit felony other than murder), 261.5 (Unlawful sexual intercourse), 262 (Rape of spouse), 273a (Cruelty to a child), 273d (Child assault), or 273.5 (Domestic violence), or any sex offense listed in Penal Code section 290 (Registration of sex offenders), except for the offense specified Penal Code section 243.4(d) (Sexual battery - touching).
- b. Any felony or misdemeanor conviction specified in subparagraph D.2.c below which occurred within 10 years of the date of the City's request.
- c. Any felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the City's request, for a violation or attempted violation of any of the offenses specified in Penal Code sections 207 *et seq.* (Kidnapping), 211 (Robbery), or 215 (Carjacking), wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in Penal Code section 12022(d), in the commission of that offense, or for a violation or attempted violation of the offenses specified in Penal Code sections 217.1 (Attempts to kill – Public officials), 236 (False imprisonment), 240 *et seq.* (Assault and battery), or any of the offenses specified in Penal Code section 667.5(c) (Prior prison terms;

enhancement of prison terms for new offenses), provided that the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the City's request or has been incarcerated for any of those convictions within the preceding 10 years.

- d. Any crime described in the *California Uniform Controlled Substances Act*, Health and Safety Code section 11100 *et seq.*, provided that the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10 year period.
- e. Any felony or misdemeanor conviction under Penal Code section 311 *et seq.* (Obscene matter - photographic use of children relative to sexual conduct).

**3. Use of Funds and Public Records.** In addition to the above, for positions relating to use of funds and public records:

- a. Penal Code §§ 115, 115.3: Use of a false or forged public record; alteration of certified copy of public record.
- b. Penal Code § 424: Embezzlement and falsification of accounts.
- c. Penal Code § 470 *et al.*: Any violation of forgery and counterfeiting.

**4. Other Convictions.** In addition to the above, for positions requiring strict public confidence including, without limitation, the City Manager, City Clerk, and department heads, any Penal Code violation which resulted in conviction.

**5. Pattern of Misconduct.** In addition to the above, the hiring authority may elect not to hire any candidate whose criminal history shows a pattern of misconduct of similar or dissimilar offenses, but not including the aforementioned offenses, but otherwise deemed incompatible with the duties and responsibilities of the position concerned or otherwise presenting a significant risk to the City.

**E. Use of Criminal History Information.** The following will be used in evaluating and acting upon criminal history information:

**1. Prospective Employees and Volunteers.** Prospective employees and volunteers with an undisclosed criminal history will not be hired. Those who voluntarily disclose their criminal history will be evaluated on a case-by-case basis, except that those convicted or arrested pending adjudication for a proscribed criminal act will not be hired.

**2. Voluntary Disclosure Subsequent to Hire.** Those employees and volunteers who subsequently and voluntarily disclose a criminal history not disclosed at their time of hire will be evaluated on a case-by-case basis. Those convicted for a

proscribed criminal act will be terminated; those arrested pending adjudication for a proscribed criminal act may be suspended from duty without pay pending the City's determination of their employment status. Those with other criminal history not previously disclosed may be retained depending on nature of their crime, the length of time since the crime occurred, and their performance while in the City's service.

**3. Involuntary Disclosure Subsequent to Hire.** Those employees and volunteers who are subsequently found to have a previously undisclosed criminal history will be evaluated on a case-by-case basis. Those convicted for a proscribed criminal act may be terminated in accordance with applicable law including, without limitation, these Rules; those arrested pending adjudication for a proscribed criminal act will be suspended from duty without pay pending the City's determination of their employment status. Those with other criminal history not previously disclosed may be retained depending on the nature of their crime, the length of time since the crime occurred and their performance while in the City's service. Employees who fail to disclose past criminal history may be subject to disciplinary action, up to and including termination of employment.

**4. Criminal Conduct Occurring Subsequent to Hire.** Those employees and volunteers who are subsequently convicted or arrested pending adjudication for criminal conduct will be evaluated on a case-by-case basis. Those convicted for a proscribed criminal act may be terminated; those arrested pending adjudication for a proscribed criminal act may be suspended from duty without pay pending the City's determination of their employment status.

**F. Reporting Responsibilities of Applicants, Employees and Volunteers.** It is the responsibility of every job applicant, employee, and designated volunteer to report to the City any criminal conviction or arrest pending adjudication. Such reports will be made to the department head concerned and the Human Resources and Risk Manager.

**G. Access, Maintenance, and Confidentiality of Criminal History Information.**

1. 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.

2. The access, maintenance, and destruction of CORI will be restricted to authorized City personnel only and conform to the conditions within the Subscriber Agreement.

3. The City Manager will assign City personnel to perform as records custodians of DOJ information and records.

4. CORI will be used by City personnel solely for the purposes of personnel selection and human resource allocation.

**H. Misuse of CORI.** Misuse of CORI is a criminal offense. Violation of this policy may result in criminal or civil prosecution as well as disciplinary action by the City, up to and including termination of employment.

**SECTION 2.** This Resolution does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before, this Resolution's effective date. Any such amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Resolution.

**SECTION 3.** If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.

**SECTION 4.** To the extent that Resolution No. 09-48 (adopted August 10, 2009), and any other resolution pertaining to criminal background checks on employees or volunteers or handling the received criminal background information of employees and volunteers, is incorporated into this Resolution, it is superseded in its entirety.

**SECTION 5.** To the extent that any other resolution pertaining to conducting employee criminal background checks and securing received criminal offender record information is incorporated into this Resolution, it is superseded in its entirety.

**SECTION 6.** The City Manager will establish policies and procedures as necessary to carry out this policy.

**SECTION 7.** The Mayor, or presiding officer, is hereby authorized to affix his/her signature to this Resolution signifying its adoption and the City Clerk, or her duly appointed deputy, is directed to attest thereto.

**SECTION 8.** This Resolution will become effective immediately upon adoption.

**PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER THIS \_\_\_ DAY OF \_\_\_\_\_ 2016.**

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**Dan Koops, Mayor**

**ATTEST:**

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**Mayra Ochiqui, City Clerk**

**APPROVED AS TO FORM:**

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**Karl H. Berger, City Attorney**