



City of Vernon, California
Human Resources Policies and Procedures

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[Signature]
City Administrator

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SUBJECT: CRIMINAL BACKGROUND AND LIVE SCAN POLICY

PURPOSE:

The City of Vernon is committed to providing a secure and safe environment for its employees, volunteers, and members of the public. To that end, the City Council adopted a resolution authorizing the Human Resources Department and the Police Department to obtain State and Federal summary criminal background information from the Department of Justice and Federal Bureau of Investigation for employment purposes. The purpose of this policy is to ensure that the process for obtaining criminal background information is conducted in accordance with state and federal laws.

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(b)(11) and 13300(b)(11) permits cities to obtain state and federal summary criminal background information from the Department of Justice and the Federal Bureau of Investigation 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 Human Resources Department and Police Department to access such State and Federal summary criminal background information from the Department of Justice and Federal Bureau of Investigation for employment purposes pursuant to Resolution Number 2015-08
2. **General** - The City shall not consider for employment, promotion, or lateral transfer a person or volunteer who has been convicted of a felony or a misdemeanor involving moral turpitude as provided in Section 4 of this Policy. A report of prior conviction or subsequent conviction may be cause for termination or separation of any employee or volunteer if the conviction is for a crime specified in Section 4 or subsections therein. However, the conviction may be disregarded if it is found and determined by the City Administrator 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 disciplinary appeal rights under any applicable Memorandum of Understanding.

3. **Criminal Record Background Checks** - The City shall obtain criminal background information on all prospective full-time and part-time employees and volunteers, including police reserves, all current employees and volunteers who work with or supervise minors, and all employees considered for promotion who have not previously participated in the Live Scan process.
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 unless mitigating circumstances exist or the conviction is not related to the employment in question:

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 an individual 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 Paragraph 4.A above, a conviction of any of the offenses specified in Public Resources Code Section 5164(a)(2) shall be grounds for disqualification or termination. Offenses specified in Public Resources Code Section 5164(a)(2) include are but not limited to:
 1. Violations or attempted violations of Penal Code Sections 220, 261.5, 262, 273a, 273d or 273.5;
 2. Sex offenses listed in Penal Code Section 290 (excluding Penal Code Section 243.4(d)), including, but not limited to, Penal Code sections 288 and 311.
 3. Any crime described in the California Uniform Controlled Substances Act (Division 10 [commencing with Section 11000] of the California Health and Safety Code). However, with the exception of law enforcement, any marijuana conviction over two years old will not be considered.
 4. 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.

- C. With respect to all applicants for and current employees and volunteers in positions that work with public funds or public records, in addition to Paragraph 4.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

In compliance with Labor Code Section 432.9, after a determination is made by the Human Resources Department that the applicant meets minimum qualifications for a position, it is the responsibility of the applicant to report to the City, any conviction on any statutory violations in Section 4 above. A supplemental questionnaire will be provided to applicants.

The employee or volunteer shall report criminal convictions to his or her Department Head or his or her designee and the Human Resources Director if said conviction 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 for applicants 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 and the Federal Bureau of Investigations accompanied by any other forms or information required by the agencies in order to obtain the criminal background information.
2. Any information obtained from the Department of Justice or Federal Bureau of Investigations shall be used to determine whether the applicant is disqualified.
3. The City shall expeditiously provide a copy of the information to the applicant to whom the information relates if the information is a basis for an adverse employment decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

4. The City may promote, lateral transfer or hire a prospective employee contingent upon the results of the criminal background information received during the employee's probationary period. 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 Criminal Conviction Questionnaire. An employee promoted pending the receipt of criminal background information, may be returned to the position in which they previously held. However, if the position is no longer available an alternative vacant position may be offered and considered on a case-by-case situation. The alternative position may or may not be equal to the position previously held.
- B. The City shall enter into a contract with the Department of Justice and the Federal Bureau of Investigations whereby the City will be notified of 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, the Department Head or his or her designee, the City Administrator, the Human Resources Director and/or the City Attorney shall evaluate the effect and potential effect of the employee's or volunteer's conviction 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.

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 regular full-time or part-time employee in accordance with applicable disciplinary procedures. All Civil Service employees are entitled to a pre-disciplinary hearing as provided by any applicable Memorandum of Understanding.
 3. Upon receipt of information regarding an arrest, if the Department Head or his or her designee, the City Administrator, the Human Resources Director and/or the City Attorney determine that the arrest involves allegations of conduct that, if proven to be true, would be sufficiently serious and job-related to disqualify the person from employment and/or to present a threat of harm to the City, its employees or the public, a limited independent investigation may be initiated and/or the City may take any other action they deem necessary, including but not limited to placing the employee or volunteer on administrative leave pending a decision resolving the matter. A "limited independent investigation" need not be of the same depth as may be an investigation undertaken to consider the imposition of discipline as to an employee. For example, such a "limited independent investigation" could consist of examination of arrest/crime reports and/or contact with involved law enforcement personnel.

4. Based on the "limited independent investigation", the Department Head or his or her designee, the City Administrator, the Human Resources Director and/or the City Attorney will determine whether there is reasonable cause to believe that charges resulting in the arrest are true, and whether the individual presents a credible threat of violence or other criminal activity that may affect City employees or the public. If it is determined that the evidence does support these findings, the City may take such actions as it deems necessary based on that evidence. Such actions may include, but are not limited to, placing an employee on paid administrative leave pending the resolution of the criminal case or the conclusion of a full independent investigation of the underlying facts, holding the decision on the employment of an applicant or new hire in abeyance, or rejecting an applicant or new hire.
5. 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 may be grounds for disciplinary action up to and including termination.

7. Confidentiality

State and federal summary criminal history information is confidential and shall not be disclosed, except to the Department Head on a need to know basis, Human Resources Director, City Attorney and City Administrator. Any persons 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 inquiries 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 by the Human Resources Department or Police Department 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 Human Resources.
- D. *Record Destruction* - Unless a legitimate business need or statute requires retention, CORI and copies of same obtained for employment, licensing or

certification purposes shall be destroyed once a decision is made to employ, license or certify the subject of record.

- E. *Record Reproduction* - CORI may not be reproduced for dissemination.
- F. *Training* - The Human Resources Director and his or her designee 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 and/or Federal Bureau of Investigations.
- 3. Makes determination based on report and informs the City Administrator, City Attorney and the Department Head if unacceptable circumstances are found.

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

Human Resources Director

- 5. If the report is not acceptable and sufficient mitigating circum-

stances are not found, initiates in consultation with the City Attorney, the City Administrator and the Department Head, the action to be taken against applicant.

6. Sends disqualification letter if background on applicant for hire or promotion is unacceptable.
7. Continues with the hiring or promotion process if the report is acceptable or sufficient mitigating circumstances are found.