

**CITY OF MISSION VIEJO**  
**Personnel Policy**

Subject:       **CONDUCTING CRIMINAL BACKGROUND CHECKS AND SECURING CRIMINAL HISTORY INFORMATION RECEIVED BY THE CITY**

Statement of Intent:

To establish a policy for staff to administer criminal background checks and securing criminal history information received by the City.

Policy:

I. Policy Statement

- A. To ensure that the interests of the City of Mission Viejo ("City"), its employees and members of the public are protected and to help minimize potential liability, the City will obtain from the Department of Justice summary criminal background information on (i) applicants for City employment and volunteer positions and on existing employees; (ii) applicants and/or employees for specified City licenses, certifications, and/or permits, and (iii) employees of specified types of businesses who must provide their fingerprints as part of the application process as required by certain municipal ordinances.
- B. The City desires to identify those individuals mentioned in paragraph A, of this Section, who have a criminal history so that information about criminal history can be used in employment decisions; license, permit, and certification decisions; and other business application decisions.
- C. Pursuant to California Public Resources Code Section 5164, the City shall not consider any person who has been convicted of specified offenses, as eligible for employment, or to be a volunteer, where the employment or volunteer position has supervisory or disciplinary authority over minors.
- D. The City shall not consider a person who has been convicted of a felony or misdemeanor involving moral turpitude eligible for employment or to be a volunteer if the felony or misdemeanor is to a crime specified in Section III below as being relevant to the employment in question, or in the case of a crime not actually listed, it is determined by the City Attorney to be substantially similar in nature to those listed that a reasonable person would have had notice that such a crime would bar employment and/or service as a volunteer. The conviction may be disregarded if it is determined by the City Manager that mitigating circumstances exist.
- E. In accordance with AB 218, the City shall not ask an applicant to disclose information relating to criminal conviction until the City has determined that the applicant meets the minimum qualifications for the position.
- F. The City desires to identify those employees who will have access to criminal history information regarding (i) City employees, volunteers, and

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applicants for such service; (ii) applicants and/or employees for specified City licenses, certifications, and/or permits, and (iii) employees of specified types of businesses who must provide their fingerprints as part of the application process as required by certain municipal ordinances, and to establish a policy to preserve the confidentiality of any resulting criminal history information obtained.

### II. Authority

California Penal Code Section 11105 allows cities to obtain state summary criminal background information from the Department of Justice (DOJ) if the City Council has given the City Manager authority to obtain such records. The City Manager has such authority pursuant to Resolution No. 89-128 of the City Council. For purposes of this policy, the term City Manager also includes any person designated by the City Manager to perform the duties specified herein.

Penal Code Section 11105.2 further authorizes the City to obtain State subsequent arrest information with respect to employees, volunteers, and licensing and certification duties.

Public Resources Code Section 5164 prohibits the City from employing any person in any position, whether as a volunteer or as an employee, in which the person will have supervisory or disciplinary authority over minors, if the employee or volunteer has been convicted of any offense listed in paragraph (2) of that Section 5164. California Education Code Section 10911.5 requires the City to obtain fingerprints of any person, in any public recreation program, who will have direct contact with minors. Penal Code Section 11105.3 provides that human resources agencies or employers may request from the DOJ records of all convictions or any arrest pending adjudication involving those offenses specified in California Welfare and Institutions Code Section 15660, subdivision (a), for any person who applies for employment or a volunteer position in which he/she would have supervisory or disciplinary power over a minor or any person under his/her care.

### III. Applicability

A. Applicants for Employment and Volunteer Positions. The City shall obtain criminal background information on all prospective full-time and part-time employees and volunteers. The City shall not hire individuals, if records show conviction of any of the following crimes of moral turpitude within ten (10) years of the date of application or after hiring:

General:

Penal Code Section 68	Asking for or receiving bribes
Penal Code Section 72	Presentation of fraudulent claims
Penal Code Sections 73, 74	Bribes for appointment to office
Penal Code Sections 187, 189	Murder
Penal Code Section 209	Kidnapping for ransom, extortion or

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	robbery
Penal Code Section 211	Robbery — taking personal property in possession of someone by force or fear
Penal Code Section 245	Assault with deadly weapon
Penal Code Section 261	Rape
Penal Code Section 451	Arson of structure, forest land or property
Penal Code Section 459	Burglary
Penal Code Section 484	Theft
Penal Code Section 503	Embezzlement – fraudulent appropriation of property by a person to whom it has been entrusted
Penal Code Section 518	Extortion — obtaining property by a wrongful use of force or fear or under color of official right.

- B. In addition to the provisions of Section III, paragraph A, above, the City shall not hire any person as an employee or volunteer in any position in which said person will have supervisory or disciplinary control over minors, if the applicant has been convicted of any offense specified below:
1. Violations or attempted violations of Penal Code Sections 220, 261.5, 262, 273a, 273d, 273.5, 288 or any sex offense listed in Penal Code 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 criminal background information for a violation or attempted violation of Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Penal Code Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Penal Code Section 12022, in the commission of that offense, Penal Code Section 217.1 or 236, Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, and for a violation of any of offense specified in subdivision (c) of Penal Code Section 667.5. Provided that, any misdemeanor conviction of any of the provisions referenced in this subdivision (3) shall not disqualify the applicant from employment or volunteering unless he/she has a total of three or more misdemeanor and felony convictions listed under Penal Code Section 11105.3 within the immediately preceding ten-year period.

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4. Any felony or misdemeanor conviction under Penal Code Section 311, et seq. (photographic use of children relative to sexual conduct).
- C. In addition to those crimes listed in Section III, paragraph A, above, the City shall not hire any person as an employee or volunteer for positions relating to use of public funds and public records, if records show conviction of any of the following crimes:
1. Penal Code Sections 115, 115.3 (Use of false or forged public record; alteration of certified copy of public record).
  2. Penal Code Section 424 (Embezzlement and falsification of accounts).
  3. Penal Code, Title 13, Chapter 4 (Any violation of forgery and counterfeiting).
  4. Bank fraud, blackmail, bribery, cellular phone fraud, check kiting, computer fraud, counterfeiting, credit card fraud, embezzlement, extortion, false claims, forgery, health care fraud, identity theft, insider trading, insurance fraud, investment schemes, kickbacks, larceny/theft, money laundering, ponzi schemes, pyramid schemes, racketeering, securities fraud, tax evasion, telemarketing fraud, welfare fraud, and similar white collar crimes.
- D. Existing Employees. The City shall also obtain criminal background information on all current full-time and part-time employees and volunteers who work with, have direct contact with, or who have supervisory or disciplinary control over minors, and on all current full-time and part-time employees and volunteers whose positions relate to use of public funds and/or public records.
1. Existing employees or volunteers who are in positions in which they have supervisory or disciplinary control over minors, and who have a conviction for any of the offenses listed in Section III, paragraph A or B shall be removed from their positions.
    - a. With respect to a volunteer, the volunteer shall be released from all volunteer services or placed in another volunteer position, as determined in the discretion of the City Manager.
    - b. With respect to an existing employee, the City shall remove the employee from his/her position, and may further discipline said employee, up to and including termination, as determined in the discretion of the City Manager.

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- c. With respect to any existing employee who applies for a transfer or promotion into any such position, the applicant shall not be eligible for said transfer or promotion, and will be removed from consideration for such position. Said employee may be further disciplined by the City up to and including termination, determined in the discretion of the City Manager.
    2. Existing employees or volunteers in any other position which relates to use of public funds and/or public records and who have a conviction for any offense listed in Section III, paragraph A or C, will be removed from their positions and placed in another position, or terminated from the City, in the discretion of the City Manager.
      - a. The City Manager's decision shall be based upon a consideration of all facts and circumstances, including but expressly not limited to, the length in time since each conviction, the number of convictions, the seriousness of each offense for which the employee or volunteer was convicted, the employee's or volunteer's work record with the City, and other factors as deemed appropriate by the City Manager.
    3. Notwithstanding any other provision of this Policy, in the event that the City determines that an existing employee or volunteer failed to disclose any such criminal conviction in his/her employment or volunteer application with the City, where such information was requested as part of the employment or volunteer application, the employee or volunteer may be terminated from his/her employment or volunteer position.
  - E. For positions requiring strict public confidence such as City Manager, City Attorney, City Clerk and department heads, in addition to the offenses listed in Section III, above, any Penal Code violation or other criminal offense which resulted in conviction shall be grounds not to hire, and after hiring grounds for discipline up to and including termination.
  - F. As used in this Policy, the term conviction shall include any plea, verdict or finding of guilt, regardless of whether sentence is imposed by the court, a plea of nolo contendere, or any plea dismissed after completion of probation under Penal Code Section 1203.4.
- IV. Assignment Responsibility
- It is the employee's, applicant's, or volunteer's responsibility to report any conviction or arrest pending final adjudication to the City for any offense listed in Section III, paragraph A. The information shall be included on all employment and volunteer applications; and applicants for employment and volunteers shall

complete and submit any and all inquiries seeking criminal history information at the time of application. If any convictions or arrests pending conviction occur while the employee or volunteer is working for the City, the employee or volunteer shall report that conviction or arrest to his or her supervisor who shall forward the information to the Department Head, Director of Administrative Services and City Manager. Alternatively, the City Manager and/or Director of Administrative Services may be informed directly.

V. Procedures

- A. All full-time and part-time City employees, including all existing regular full-time employees, regular part-time employees, at-will hourly, seasonal and temporary (HST) employees, volunteers, and all prospective City employees and volunteers shall be subject to a criminal records check as a condition of employment.
1. The City shall submit a completed Applicant Fingerprint Card or submit a scanned fingerprint on one of the DOJ's scan machines to the DOJ accompanied by any other forms or information required by the DOJ in order to obtain the criminal background information.
  2. Any information obtained from the DOJ shall be used to determine whether the applicant shall be offered a position with the City, or, in the case of an existing employee or volunteer, whether said employee or volunteer shall be removed from his/her existing position, or terminated from the City.
  3. The City shall not hire a prospective employee or volunteer into any position which involves supervisory or disciplinary authority over minors until the criminal background information has been completed and the background information indicates that there have been no disqualifying convictions. The City may hire a prospective employee into other positions pending the receipt of criminal background information, but said employee or volunteer shall be terminated if the employee or volunteer is found to have falsified or omitted criminal background information on the employment application, or if the criminal background investigation discloses any disqualifying conviction under this Policy.
  4. Existing employees may not be transferred or promoted into any position in which the employee would have supervisory or disciplinary authority over minors until the criminal background information has been completed and the background information indicates that there have been no disqualifying convictions. Existing employees may be transferred or promoted into any other positions, but their transfer or promotion will be conditional upon the results of the criminal background check, and any such transfer or promotion will be rescinded and have no further force and effect if

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disqualifying convictions are reported to the City. Existing employees and volunteers who are promoted or transferred pending receipt of criminal background information shall be terminated if the employee or volunteer is found to have falsified or omitted criminal background information on his/her original employment application or in any application submitted for transfer or promotion, or if the criminal background investigation discloses any disqualifying conviction under this Policy.

- B. Any employee or volunteer who has been hired subsequent to the adoption of this Policy, after passing the initial screening, must sign an acknowledgement that conviction of crimes listed in Section III, above, under their job category or determined to be substantially similar by the City Attorney shall be grounds for disciplinary action up to and including termination. (See Attachment A) In the alternative, the City may require any employee or volunteer who has been hired subsequent to the adoption of this Policy to be subject to a criminal records check as a condition of employment.
- C. The City shall enter into a contract with the DOJ so that any subsequent conviction or arrest information concerning an employee or volunteer may be obtained.
  - 1. Any information about existing employees' or volunteers' convictions and/or arrests pending adjudication shall be reported to the City Manager and/or the Senior Human Resources Analyst. The City Manager and/or Senior Human Resources Analyst may designate a specific employee(s) to receive such information in the event that the City Manager and/or Senior Human Resources Analyst are absent or otherwise unavailable.
  - 2. Upon receipt of information regarding a conviction and/or arrest pending adjudication, the City Manager and Senior Human Resources Analyst (or their designees as authorized by subdivision (1) of this paragraph C) and the Department Head shall evaluate the effect and the potential effect of the employee's or volunteer's record or arrest on their position of employment, fellow employees and the public, and shall take appropriate action as determined in the discretion of the City Manager, Senior Human Resources Analyst, and Department Head or designees, to maximize public safety and minimize potential liability while respecting the rights of the employee or volunteer.
- D. If it is found that an employee or volunteer has not reported to the City a subsequent arrest, conviction or arrest pending final adjudication, the appropriate disciplinary action, up to and including termination, will be taken.

- E. If a City employee or volunteer refuses to be fingerprinted, the appropriate disciplinary action will be taken, up to and including termination.

VI. Confidentiality

State summary criminal history information is confidential and shall not be disclosed, except to the City Manager, the Senior Human Resources Analyst, the City Attorney and those other individuals designated, by the City Manager, to make employment decisions and/or decisions regarding specified City licenses, certifications, and/or permits. In accordance with the State Attorney General's office guidelines, persons with access to such information shall sign a form acknowledging (1) that the information is confidential and (2) that civil and criminal penalties, as well as termination from employment, may result if the confidential information is misused. (See Attachment B)

- A. Pursuant to California 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 Operation and Record Security for any agency that maintains or receives criminal history information.

1. Record Security: Any inquires regarding the release, security or privacy of CORI are to be resolved by the City Manager.
2. Record Storage: CORI shall be maintained under lock and key in a file or files separate from the employees' personnel files, and accessible only to the City Manager, City Attorney, Senior Human Resources Analyst and those specific employees designated by the City Manager and/or Director of Administrative Services, who shall be committed to protect CORI from unauthorized access, use or disclosure.
3. Record Dissemination: CORI shall be used only for the purpose for which it was requested by the City Manager or City Attorney.
4. Record Destruction: Upon determination of employment, (rejection from employment, and/or discipline up to and including termination) CORI and copies of the same shall be destroyed to the extent that the name of the employee, applicant or volunteer can no longer be ascertained. Only tracking numbers shall be retained in a separate file(s) restricted to access as provided in subsection (2), above, of this paragraph A.
5. Record Reproduction: CORI may not be reproduced for dissemination.

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6. Training: The City Manager, the Senior Human Resources Analyst and any other employees with access to CORI are required:
  - a. To read and abide by this Policy;
  - b. To be fingerprinted and have a clearance check completed prior to obtaining access to CORI; and
  - c. To have on file a signed copy of the Employee Statement Regarding the Use of Criminal Record Information that acknowledges an understanding of laws prohibiting misuse of CORI. (See Attachment B)
7. Penalties: Misuse of CORI is a criminal offense. Violation of this Policy regarding CORI may result in the imposition of discipline up to and including termination, in criminal prosecution, and/or in civil action. All penalties are cumulative and non-exclusive.

### VII. Applicants for Licenses, Permits and Certifications

- A. The City shall obtain criminal background information on applicants for those licenses, permits, and/or certifications specified in the Municipal Code of the City of Mission Viejo, and any employees of businesses specified in the City of Mission Viejo Municipal Code, for the purpose of evaluating any application for any such license, permit, and/or certification in accordance with the applicable ordinance provision.
- B. Confidentiality
  1. Record Storage: CORI shall be maintained under lock and key in a file or files separate from the applicant's application file, and accessible only to the City Manager, City Attorney, and the specified employee(s) who are designated by the City Manager, Director of Recreation & Community Services, and/or Director of Community Development to review such information in conjunction with the application, who shall be committed to protect CORI from unauthorized access, use or disclosure.
  2. Record Destruction: Upon issuance of the final decision on the application, CORI and copies of the same shall be destroyed to the extent that the name of the applicant or employee can no longer be ascertained. Only tracking numbers shall be retained in a separate file(s) restricted as provided in subsection (1), above, of this paragraph B.
  3. Record Reproduction: CORI may not be reproduced for dissemination.
  4. Except as otherwise expressly modified herein, any employee with access to criminal history information regarding an applicant for a

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license, permit or certification, shall be subject to all of the requirements of Section VI of this Policy.

### VIII. Monitoring of Program

The City Manager shall monitor compliance with this Policy and all Department Heads/Directors shall assist the City Manager as needed.

#### **Administration:**

In accordance with City of Mission Viejo Municipal Code chapter 2.60 "Personnel System", this Personnel Policy is deemed not to have a direct financial impact on the City. The City Manager may implement and amend this policy subject to prior City Attorney legal review and approval, and City Council review.

Implemented: By City Manager — May 15, 2000.

Amended: By City Manager – August 2011.

Amended: By City Manager – January 1, 2014. (Reviewed by City Council — January 20, 2014 — Resolution No. 14-06.)

**City of Mission Viejo Policy for Conducting Criminal Background Checks and  
Securing Criminal History Information Received by the City**

**Employee/Volunteer Acknowledgement Form**

I have read and understand the "City of Mission Viejo Policy for Conducting Criminal Background Checks and Securing Criminal History Information Received by the City". I am aware and understand that the conviction of crimes listed in Section III under my job category or the conviction of any crime(s) determined by the City Attorney to be substantially similar to those listed crimes, shall be grounds for disciplinary action up to and including termination.

I am aware and understand that the City shall not hire as an employee or volunteer, any person convicted of any offense listed in Section III of the Policy, including but not limited to, if such position involves supervisory or disciplinary authority over minors, and that any conviction of any offense listed in Section III shall constitute grounds for rejection of any employment or volunteer application.

\_\_\_ [applicant's/employee's/volunteer's initials]

I am further aware and understand that the conviction of any offense listed in Section III may be grounds for termination and/or removal from my position as an employee or volunteer for the City and may also render me ineligible to apply for transfer or promotion into some positions.

\_\_\_ [applicant's/employee's/volunteer's initials]

I am further aware and understand that the conviction of any crime listed under Section III of the Policy or the conviction of any crime determined by the City Attorney to be substantially similar to those listed crimes, shall be grounds for rejection of any employment or volunteer application; and may be grounds for discipline, up to and including termination and/or my removal from my position as an employee or volunteer.

In addition to the Live Scan, as a requirement of the application process, I understand that I will be required to fill out a supplemental questionnaire regarding Criminal Background Checks.

\_\_\_ [applicant's/employee's/volunteer's initials]

Employee/Applicant/Volunteer Signature: \_\_\_\_\_

Typed/Printed Name of Employee Applicant/Volunteer \_\_\_\_\_

Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

**City of Mission Viejo Policy for Conducting Criminal Background Checks and  
Securing Criminal History Information Received by the City**

**Employee Statement Regarding the Use of Criminal Record Information**

As an employee of the City of Mission Viejo, it may be necessary for you to have access to confidential criminal record information in making employment decisions and/or carrying out certain duties with regard to applications for City licenses, permits, and certifications. Access to such criminal record information is controlled by statute. Misuse of such information violates the law and may adversely affect the civil rights of regular full time employees, regular part time employees, part time, seasonal and temporary employees, prospective employees, volunteers, applicants for specified City licenses, permits, certifications and other approvals, and/or employees of specified businesses in the City. Penal Code Section 502 prescribes the penalties relating to computer crimes. Penal Code Sections 11105 and 13300 identify who is permitted access to criminal history information and under what circumstances information may be released. Government Code Sections 6200 and 6201 prescribe the penalties for misuse of public records and information. Labor Code Sections 432.7 and 1051 prescribe penalties for misuse of certain criminal record information in employment decisions.

Penal Code Sections 11142 and 13303 state:

Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.

Any employee who is responsible for such misuse of criminal record information may be subject to discipline up to and including termination. Violations of this law may also result in criminal prosecution and/or civil action.

I HAVE READ AND UNDERSTAND THE ABOVE "CITY OF MISSION VIEJO POLICY FOR CONDUCTING CRIMINAL BACKGROUND CHECKS AND SECURING CRIMINAL HISTORY INFORMATION RECEIVED BY THE CITY". I AM AWARE OF THE STATUTES AND POLICIES PERTAINING TO THE MISUSE OF CRIMINAL RECORD INFORMATION AND I SHALL ABIDE BY THOSE STATUTES AND POLICIES.

Employee Signature: \_\_\_\_\_

Typed/Printed Name of Employee: \_\_\_\_\_

Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_