

**Council Meeting: April 22, 2008****SUBJECT: Adoption of Resolution to Authorize the City of Sunnyvale to Receive Federal and State Criminal History Information for Applicants Who Request Certain Licenses or Permits through the Department of Public Safety to Work in the City****REPORT IN BRIEF**

DPS issues licenses and/or permits to the owners of Adult Entertainment Establishments, Massage Establishments and to the people who perform massage therapy, to people who own and operate taxicabs under an Exclusive Taxicab Franchise within Sunnyvale City Limits, Pawn Brokers and people who have second hand dealer businesses, and Firearms Dealers. As a matter of public safety, a background check is run on these applicants to ensure they do not pose a risk to the community. At present, the background check includes a State criminal history check, but not a Federal criminal history check although it is allowed pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11).

This report recommends that the City Council adopt a Resolution authorizing the City of Sunnyvale to access Federal as well as State summary criminal history information for applicants requesting certain licenses or permits issued by the Department of Public Safety (DPS) to work in the City.

BACKGROUND

California Penal Code Section 11105(b)(11) and California Penal Code Section 13300(b)(1) allows cities, when access is specifically authorized by the City Council, to access summary criminal history information from the State Department of Justice and from the Federal Bureau of Investigations for the purpose of fulfilling employment, certification, or licensing duties. Currently, an applicant fingerprint check is done only at the State level before Public Safety issues certain licenses or permits; this Resolution will allow authorized access to review Federal summary criminal history information as well.

EXISTING POLICY

Law Enforcement Sub-Element

4.1.A Provide a safe and secure environment for people and property in the community.

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DISCUSSION

To ensure the interests of the City, its employees, and members of the public are protected, and to minimize potential liability, it is recommended that the applicants for permits and licenses to operate certain businesses within the city limits have their summary criminal history checked via fingerprint submission at the Federal, State and local level. This is allowable, when specifically authorized by the City Council, by the California Penal Code (Sections 11105 (b)(11) and 13300(b)(11)). The current background check done by DPS for a permit includes a local records check and fingerprint verification of California state criminal history. Staff is recommending that the Federal records check be included in the background process conducted for some applicants requesting a license or permit from the DPS. The background check is used in part, to determine if a person might pose a risk to the community by performing the services as indicated by the permit, and the DPS will not consider a person who has been convicted of a felony or misdemeanor involving moral turpitude eligible for licensing unless that conviction is disregarded if it is determined that mitigating circumstances exist, or that the conviction is not related to the license or permit in question.

FISCAL IMPACT

The cost of adding the Federal records check will be included in the cost of the license or permit issued. Through a technology enhancement to the current fingerprint machine at no cost to DPS, the Federal check will be done on the single set of fingerprints scanned. There will be no fiscal impact to the city.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Adopt the Resolution authorizing the City of Sunnyvale to access Federal as well as State summary criminal history information for applicants of licenses and/or permits for Adult Entertainment Establishments, Massage Establishments and applicants who perform massage therapy, for applicants who own and operate taxicabs under an Exclusive Taxicab Franchise within Sunnyvale City Limits, for Pawn Brokers and applicants who have second hand dealer businesses, and Firearms Dealers.

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2. Do not adopt the Resolution authorizing the City of Sunnyvale to access Federal as well as State summary criminal history information for applicants of licenses and/or permits for Adult Entertainment Establishments, Massage Establishments and applicants who perform massage therapy, for applicants who own and operate taxicabs under an Exclusive Taxicab Franchise within Sunnyvale City Limits, for Pawn Brokers and applicants who have second hand dealer businesses, and Firearms Dealers.

RECOMMENDATION

Staff recommends Alternative #1: Adopt the Resolution authorizing the City of Sunnyvale to access Federal as well as State summary criminal history information for applicants of licenses and/or permits for Adult Entertainment Establishments, Massage Establishments and applicants who perform massage therapy, for applicants who own and operate taxicabs under an Exclusive Taxicab Franchise within Sunnyvale City Limits, for Pawn Brokers and applicants who have second hand dealer businesses, and Firearms Dealers.

Reviewed by:

Don Johnson, Director, Public Safety
Prepared by: Heather Tannehill, Manager

Approved by:

Amy Chan
City Manager

Attachments

A. Resolution

RESOLUTION NO. ____-08

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYVALE AUTHORIZING THE DEPARTMENT OF
PUBLIC SAFETY TO ACCESS STATE AND FEDERAL
CRIMINAL HISTORY INFORMATION FOR PURPOSES OF
LICENSING AND CERTIFICATION**

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)(11) 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 CITY COUNCIL OF THE CITY OF SUNNYVALE THAT the Department of Public Safety of the City of Sunnyvale is hereby authorized to access state and federal level summary criminal history information for purposes of licensing or certification and may not disseminate the information to a private entity; and

BE IT FURTHER RESOLVED that the City of Sunnyvale shall not consider a person who has been convicted of a felony or misdemeanor involving moral turpitude eligible for 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 license or permit in question.

Adopted by the City Council at a regular meeting held on ____, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

The undersigned hereby consents to the destruction of the above-referenced records.

Dated: ____, 2008

David Kahn, City Attorney