



**Council Meeting: April 7, 2009**

**SUBJECT: Adoption of Amended Resolution to Authorize the City of Sunnyvale to Receive Federal and State Criminal History Information for Specific People who are Licensed or Permitted through the Department of Public Safety to Work in the City**

**REPORT IN BRIEF**

This report recommends that the City Council adopt the amended Resolution to authorize the City of Sunnyvale to access Federal and State summary criminal history information for specific people, as identified, requesting a license or permit issued by the Department of Public Safety (DPS) to conduct business within the City. This amendment is necessary to satisfy new administrative requirements from the Federal Bureau of Investigation.

**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 State summary criminal history information from the State Department of Justice and information from the Federal Bureau of Investigations for the purpose of fulfilling employment, certification, or licensing duties. In April 2008, Council adopted a resolution allowing for the submission of fingerprint queries to the FBI allowing for a summary criminal history to be run at the State and Federal level. The FBI is now requiring that the titles of the positions being subjected to a background check must be specified in the Resolution. Specifically, 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, people who are issued Explosive Permits and Firearms Dealers. As a matter of public safety, a background check is run on these people to ensure they do not pose a risk to the community.

**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**

In order 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 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. The purpose of this resolution is to amend the existing Resolution adopted in 2008 to include the specific applicants that are having the Federal Summary Criminal History checked through the fingerprint process.

**FISCAL IMPACT**

There will be no fiscal impact to the city.

**PUBLIC CONTACT**

Public contact was made through posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, and the availability of the report in the Library, City Clerk's Office, Community Center, and Senior Center.

**ALTERNATIVES**

1. Adopt the amended Resolution authorizing the City of Sunnyvale to access Federal and State summary criminal history information for all people requesting a license or permit from the Department of Public Safety to operate specific businesses within the City of Sunnyvale.
2. Do not adopt the amended Resolution authorizing the City of Sunnyvale to access Federal and State summary criminal history information for all people requesting a license or permit from the Department of Public Safety to operate specific businesses within the City of Sunnyvale.

**RECOMMENDATION**

Staff recommends Alternative #1: Adopt the amended Resolution authorizing the City of Sunnyvale to access Federal and State summary criminal history information for all people requesting a license or permit from the Department of Public Safety to operate specific businesses within the City of Sunnyvale.

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Reviewed by:

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

Reviewed by:

David A. Kahn, City Attorney

Approved by:

Gary M. Luebbers  
City Manager

**Attachments**

A. Resolution

**RESOLUTION NO. \_\_\_\_\_**

**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 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 and 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, Explosives Permit Holders, and Firearms Dealers, 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 \_\_\_\_\_, 2009, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
(SEAL)

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David Kahn, City Attorney