

City of Seaside
Policy for Conducting Criminal Background Checks and
Securing Received Criminal History Information

I. POLICY STATEMENT

- A. To ensure that the interests of the City of Seaside (“City”), its employees, volunteers, and members of the public are protected and to help minimize potential liability, the City has passed a resolution authorizing it to implement this criminal background check policy.
- B. Consistent with state and federal law, criminal background checks will be conducted when job-related and consistent with business necessity. Pursuant to this standard, candidates for designated sensitive positions with the City will be subject to a criminal background check. All offers of employment, appointment, promotion or transfer to sensitive positions are contingent upon successful completion of the criminal background check.

II. AUTHORITY

The Human Resources Director has authority to implement this policy pursuant to Resolution No. 94-79 of the City Council of the City of Seaside.

III. POLICY & PROCEDURES

A. Definitions

- 1. Candidate. An individual who files an application for employment or volunteer application, has gone through a recruitment and selection process, and has been selected for the vacancy. “Candidate” includes existing employees seeking appointment, promotion, or transfer to positions where a criminal background is required by law.
- 2. Criminal History Statement. The criminal history statement is the document or documents relating to criminal records provided to the City by a third-party vendor or any other City. Criminal background information will be obtained through a third-party vendor, and may include information compiled from the California Department of Justice, the FBI National Crime Information Center, and other sources deemed appropriate by the Human Resources Director.

Except as otherwise required by law, criminal history statements shall not include records of arrests that did not lead to convictions, convictions that have been expunged, judicially sealed or dismissed, any information

pertaining to diversion programs, or juvenile court records regardless of whether such records are sealed or unsealed.

3. Employee. An individual who is currently employed by the City. Except as otherwise stated by the Human Resources Director, employees include all temporary employees, including employees provided by temporary staffing agencies.
4. Sensitive Positions. Sensitive positions are designated by the City's Human Resources Director as requiring heightened scrutiny of individuals holding the position, based on potential for physical, financial or other harm to the City, its employees and volunteers, its resources, systems, operations, and/or property, and members of the public.

Sensitive positions may include, but are not limited to, those with:

- a. Responsibility for the care, safety and security of adults or property;
- b. Responsibility for or the care, supervision, safety, and security of minors, including responsibility for disciplinary power;
- c. Access, control or handling of cash, checks, credit cards, credit card account information, bank accounts and financial information;
- d. Authority to commit financial resources of the City or enter into financial transactions or obligations on behalf of the City;
- e. Access to, control or handling of confidential personnel information and/or personally identifiable information about officials, employees, volunteers, or members of the public, which might enable identity theft (such as personal contact information, birthdates, social security numbers, direct deposit information and driver's license numbers);
- f. Access to controlled substances, and firearms or other weapons;
- g. Possession of building master or sub-master keys or access cards for access to any City facility or property, or regular access to such keys or access cards; or
- h. Any position for which the City is legally required to obtain criminal background information. This includes, but is not limited

to: positions for which an employee is required to use a firearm, certain positions that involve operation of City vehicles, positions at a residential care facility for the elderly, or any position for which the employer is prohibited by law from hiring any person with a criminal conviction.

Examples of sensitive positions include: all child care-related positions, including coaching, summer camp, or youth program positions; positions with significant responsibility over financial operations; positions that provides access to controlled substances or dangerous chemicals; and, employees with access to sensitive personnel information. When a particular job position is designated as a “sensitive position,” this will be stated on the job description. A complete list of sensitive positions is in Appendix A.

5. Volunteer. Anyone who has been approved to work for the City without compensation, pursuant to an established volunteer program.

B. Applicability.

Except as otherwise stated in this policy, a criminal background check shall be conducted on successful candidates for all sensitive positions, all employees who are appointed, promoted, or transferred to a position where a criminal background check is required by law, and all volunteers performing duties considered comparable to those of sensitive positions.

Hiring, appointment, transfer or promotion to sensitive positions shall be contingent on successful completion of a criminal background check. The criminal background check process shall be completed prior to the commencement of such hiring, appointment, transfer, promotion, or volunteer service.

Unless otherwise required by law, criminal background checks will only be conducted after the appointing authority has determined that the employee, candidate, or volunteer has met all other criteria for the employment or volunteer position, and has provided an offer of employment contingent upon successful completion of a criminal background check

This policy shall not, however, apply to peace officers, whose criminal background check requirements and procedures are set forth in a separate policy.

C. Procedures.

1. Initiating the Process.

- a. The Human Resources Director, or her/his designee, will provide the candidate, employee, or volunteer with all legally required disclosures and information and necessary forms to be completed for a criminal background check. Any form provided to the candidate, employee, or volunteer, shall indicate that a criminal background check will be performed, and shall indicate each City or third-party vendor responsible for conducting the criminal background check. All documents associated with the criminal background check must be returned to the Human Resources Director or his/her designee.
- b. The Human Resources Director, or her/his designee, will then submit the completed forms to a third-party vendor, for the purpose of obtaining a criminal history statement. The criminal history statement is confidential, and may only be accessed by authorized personnel.

2. Employment/Volunteer Decisions.

The review of the criminal history statement for all employees except for those hired by the Police Department will be conducted by the Human Resources Director to determine whether a criminal conviction precludes employment or volunteer service in, or reassignment to, a sensitive position. The Chief of Police will review criminal history statements for Police Department employees and for all other employees in the Human Resource Director's absence.

The determination as to whether adverse results from a criminal background check may preclude employment or volunteer service is based on a review of the job duties and the nature of the information contained within the criminal history statement. If the criminal background check findings are unrelated to the assigned job duties, they will normally not preclude employment or volunteer service.

The Human Resources Director or Chief of Police will provide a summary of the results of the criminal background check to the candidate (including candidates for volunteer positions) or the employee. If the criminal history statement reveals potentially disqualifying information, candidates for sensitive positions will be given an opportunity to fully

explain any such adverse information, as set forth in Section 5, below.

Each case will be reviewed on an individual basis taking into consideration the following criteria:

- a. Seriousness of the crime;
- b. Relationship between the job duties and the crime;
- c. Age of the candidate or employee at the time of the conviction;
- d. Candidate's conduct, performance and rehabilitation efforts since the conviction;
- e. Length of time elapsed since the conviction; and,
- f. Past determinations in similar circumstances.

The City will consider additional criteria when required by law to do so, as set forth more fully in Section 6, below.

3. Exclusions.

Except as otherwise required by law, the City shall neither seek nor utilize the following types of criminal history information in making any decision regarding employment or appointment to a volunteer position:

- a. Records of an arrest or detention that did not lead to a conviction;
- b. Records of a conviction that has been expunged, judicially sealed, or dismissed;
- c. Records of pre-trial and post-trial diversion programs;
- d. Misdemeanor convictions for possession of marijuana, if the conviction is more than two years old and is based on a violation of any of the following statutes: Health & Safety Code sections 11357(b), 11357(c), 11360, 11364, 11365, and 11550.

Violation of this Section, including seeking or obtaining prohibited information from any source, or utilizing prohibited information in making an employment decision, is a misdemeanor. Furthermore, violation of this Section may result in disciplinary action, up to and including termination.

- e. Records of any arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while under the jurisdiction or juvenile court law. This exclusion applies regardless of whether such records are sealed or unsealed.

4. Responsibility of Employee.

- a. Upon any conviction of a crime, other than a minor traffic violation or misdemeanor marijuana convictions described in Section 3(d) above, an employee or volunteer in a sensitive position or a candidate for hiring or appointment, promotion or transfer to a sensitive position is required to report the conviction immediately to the Human Resources Director. Failure to do so may result in discipline, up to and including termination.
- b. However, where required by law, certain employees and volunteers in sensitive positions are required to report both arrests, and lesser convictions.

5. Review Process.

In the event that a criminal background check reveals adverse information, the candidate, employee, or volunteer will be given an opportunity to fully explain the adverse information to the Human Resources Director prior to the implementation of any final employment decision. Notification will be provided to the candidate, employee, or volunteer in writing. This written notification will contain notice that a disqualifying conviction is the basis for the preliminary decision to rescind the conditional offer of employment.

After notification of any preliminary decision, the candidate, employee, or volunteer will have five days to provide a response. The Employer will not make a final decision until it has considered the additional information provided by the candidate, employee, or volunteer. Specifically, the individual will be provided the opportunity to demonstrate that the information contained within the criminal history statement is inaccurate, that there is an insufficient nexus between the nature of the criminal conviction and the job duties, and/or to provide additional information or a further explanation regarding the information contained in the criminal history statement. Additional information may include mitigating circumstances or evidence of rehabilitation.

If the Employer proceeds to revoke a conditional offer of employment after the review process described in this part, a written notification of the final decision will be provided. This will include a statement that a final denial has been made, and will inform the candidate, employee, or volunteer of any existing procedure available for challenging the decision, as well as the right to file a complaint with the Department of Fair Housing and Employment.

6. Relationship to Other Laws and Policies

Where heightened criminal background checks are otherwise required by law, such criminal background checks will be conducted in addition to or in lieu of the procedures and requirements set forth in this policy. Nothing in this policy is intended to interfere, alter, or prohibit the City or any department from conducting such criminal background checks where they are required by law.

For example, the following types of positions may be subject to additional background check screening, including inquiry as to arrests that did not lead to convictions: positions with access to fire-arms; non-sworn employees of criminal justice agencies; and positions with access to medications or other controlled substance. This list is intended to be illustrative, and is not exhaustive.

IV. CONFIDENTIALITY

Criminal history statements, and any other criminal history information obtained by the City, are confidential and shall not be disclosed, except to the designated staff within the Human Resources Department.

- A. Security. Criminal history statements shall be stored separately from an employee's personnel file in a secured area accessible only to the Human Resources staff.
- B. Dissemination. The City treats criminal history statements as confidential personnel records. Criminal history statements will not be disseminated to anyone other than the Human Resources Director. Any inquiries or subpoenas for employment or personnel records, including criminal history statements, must be referred to the Human Resources Director and the City Attorney shall be used only for the purpose for which it was requested by the Human Resources Director.
- C. Compliance. Investigative consumer reports such as background checks obtained by the City are subject to the requirements of the Fair Credit Reporting Act and California Investigative Consumer Reporting Agencies Act.
- D. Penalties. Misuse of criminal history information may be a criminal offense. Furthermore, violation of this part may result in disciplinary action, up to and including termination.

V. MONITORING OF THIS PROGRAM

The Human Resources Director will monitor compliance with this policy and all other Department Heads shall assist the Human Resources Director as needed.

This policy is adopted by the City of Seaside and shall be effective February 14, 2018.

All positions required by state and/or federal law to have a complete criminal history check include all employees in the Police Department and Recreation employees that work with children and/or seniors.

Additionally, the following positions have been determined to be “sensitive” and require a criminal history check.

| Department | Positions | Sensitive Functions | Disqualifying Convictions |
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| All Departments | All classifications | <ul style="list-style-type: none"> Interacting with the public and coworkers, managers, and supervisors. | Any conviction that may indicate a candidate is prone to violence that may lead to work place violence including, but not limited to: <ul style="list-style-type: none"> Felony Violent Crimes Domestic Violence Hate Crimes Sexual Misconduct Crimes |
| All Departments | Any classification required to drive for City business. | <ul style="list-style-type: none"> Driving vehicles for City business. | Any conviction that demonstrates poor judgement when operating a motor vehicle including, but not limited to: <ul style="list-style-type: none"> DUI Hit and Run Reckless Driving |
| All Departments | Any classification issued keys to City owned or managed buildings. | <ul style="list-style-type: none"> Unsupervised access to City facilities. | Any conviction that may indicate a candidate has engaged in theft or other misconduct involving the use of another person’s property including, but not limited to: <ul style="list-style-type: none"> Fraud Theft Burglary Extortion Embezzlement Identity Theft Forgery |
| Administrative Services City Managers’ Office Human Resources Recreation Community Development | All classifications that engage in the listed sensitive functions including, but not limited to: | <ul style="list-style-type: none"> Unsupervised handling of cash, checks, and credit cards; Direct access to, or control over, cash, | Any conviction that may indicate a candidate has engaged in theft or other financial misconduct including, but not limited |

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| Public Works | <ul style="list-style-type: none"> ▪ Facility Receptionist ▪ Office Assistant ▪ Administrative Assistant ▪ Senior Admin Assistant ▪ Executive Assistant ▪ Accounting Technician ▪ Payroll Technician ▪ Accountant I/II ▪ Human Resources Technician ▪ Recreation Program Coordinator ▪ Economic Development Manager ▪ Recreation Superintendent ▪ Recreation Director ▪ Maintenance & Utilities Superintendent ▪ All Maintenance & Utilities Division staff ▪ Custodian ▪ Facility Attendant | <p>checks, credit cards, and/or credit card account information;</p> <ul style="list-style-type: none"> ▪ Unsupervised handling of an individual's private, personal and confidential information; and ▪ Possession of building keys for building access, or regular access to such keys. | <p>to:</p> <ul style="list-style-type: none"> ▪ Fraud ▪ Theft ▪ Burglary ▪ Extortion ▪ Embezzlement ▪ Identity Theft ▪ Forgery |
| Public Works Community Development | <p>All classifications that engage in the listed sensitive functions including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Building Official ▪ Code Enforcement Officer ▪ Associate Planner ▪ Senior Planner ▪ Senior Civil Engineer ▪ Associate Civil Engineer ▪ Assistant Engineer ▪ Junior Engineer | <ul style="list-style-type: none"> ▪ Unsupervised handling of an individual's private, personal and confidential information; ▪ Any position in a business where part of the regular operations of the business involves the unsupervised entry into private or business premises for the performance of its service or to otherwise conduct business; and ▪ Possession of building keys for building access, or regular access to such keys. | <p>Any conviction that may indicate a candidate has engaged in theft or other misconduct involving the use of another person's property including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Fraud ▪ Theft ▪ Burglary ▪ Extortion ▪ Embezzlement ▪ Identity Theft ▪ Forgery |
| Administrative Services City Manager Human Resources | <p>All classifications that engage in the listed sensitive functions including, but not limited to:</p> | <ul style="list-style-type: none"> ▪ Unsupervised handling of an individual's private, personal and confidential information; | <p>Any conviction that may indicate a candidate has engaged in theft or other misconduct involving the use of another person's</p> |

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| | <ul style="list-style-type: none"> ▪ Deputy CM Admin Services ▪ City Manager ▪ Human Resources Director ▪ Recreation Director ▪ Police Chief ▪ Fire Chief ▪ Assistant Finance Director ▪ Public Works Services Manager / City Engineer ▪ Information Technology Manager ▪ Economic Development Manager ▪ PAO/City Clerk ▪ City Clerk | <ul style="list-style-type: none"> ▪ Authority to commit financial resources of the City through purchasing; ▪ Control over City business processes, either through functional roles or system security access; and ▪ Possession of building keys for building access, or regular access to such keys. | <p>property including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Fraud ▪ Theft ▪ Burglary ▪ Extortion ▪ Embezzlement ▪ Identity Theft ▪ Forgery |
| Human Resources Department | <p>All classifications that engage in the listed sensitive functions including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Human Resources Director ▪ Human Resources Technician | <ul style="list-style-type: none"> ▪ Any position that is authorized to handle and store Criminal Offender Record Information (CORI). | <p>All convictions that exclude employment under the law.</p> |
| Administrative Services | <p>All classifications that have network security access including but not limited to:</p> <ul style="list-style-type: none"> ▪ Information Technology Manager ▪ Information Technology Technician | <ul style="list-style-type: none"> ▪ All positions with administrator access to the City's network, servers, and computer systems. | <p>Any conviction that may indicate a candidate has engaged in criminal misconduct involving computer systems including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Internet Fraud ▪ Cyber Crime |
| Recreation Department | <p>All classifications that supervisor or interact with children and/or seniors.</p> <p>All volunteers that supervisor or interact with children and/or seniors.</p> | <ul style="list-style-type: none"> ▪ All positions with the responsibility for the care, safety and security of adults or property; ▪ All positions with the responsibility for or the care, supervision, safety, and security of minors, including responsibility for disciplinary power. | <p>All convictions that exclude employment under the law.</p> |

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| Police Department | All peace officer classifications required by law to complete a criminal history check. | All convictions that exclude employment under the law. |
| | All non-peace officer positions required by law to complete a criminal history check. | |
| Fire Department | All sworn Fire job classifications. | All convictions that exclude employment under the law including Arson; |
| | <ul style="list-style-type: none"> ▪ Unsupervised handling of an individual’s private, personal and confidential information; ▪ Any position in a business where part of the regular operations of the business involves the unsupervised entry into private or business premises for the performance of its service or to otherwise conduct business; and ▪ Possession of building keys for building access, or regular access to such keys. | <p>And</p> <p>any conviction that may indicate a candidate has engaged in theft or other misconduct involving the use of another person’s property including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Fraud ▪ Theft ▪ Burglary ▪ Extortion ▪ Embezzlement ▪ Identity Theft ▪ Forgery |

**EMPLOYEE STATEMENT REGARDING
THE USE OF CRIMINAL JUSTICE INFORMATION**

As an employee of the City of Seaside, it may be necessary for you to have access to confidential criminal record information in making employment decisions. Access to such criminal record information is controlled by statute.

Misuse of such information may adversely affect the civil rights of prospective employees or volunteers, and violates both City policy and California law. Potential violations include, but are not limited to, Penal Code section 503, 11140-11144, and 13301-13305. Government Code Section 6200 prescribes the felony penalties for misuse of public records and California Law Enforcement Telecommunications Systems (CLETS) information.

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 not authorized by law to receive the record or information is guilty of a misdemeanor.

Labor Code Sections 432.7 and 433 prescribe penalties for misuse of certain criminal record information in employment decisions.

Additionally, any misuse of any information contained within a criminal history statement, including inappropriate use of records in making employment decisions, or unauthorized disclosure of private information, is in violation of the City's policy for conducting criminal background checks and securing received criminal history information.

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

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

Signature

Printed Name of Employee

Date