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FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE CITY OF STOCKTON	**HR-40**	
	Effective Date: **4/7/14**	Revised from: **8/1/95 3/1/00 8/30/04 7/24/06 4/14/08**

I. PURPOSE

A. To provide a uniform policy and procedure for the administration of the City of Stockton Mandatory Fingerprinting Program, in accordance with California Public Resources Code section 5164, California Education Code section 10911.5, California Penal Code sections 11105, 11105.3, 13300, and any other applicable state and federal laws.

B. To ensure that the City of Stockton, as an agency receiving criminal history information, complies with the requirements of the State of California, Department of Justice, Division of Criminal Justice Information Services.

II. POLICY

All applicants, employees, interns, temporary agency employees, and volunteers who meet the following conditions shall be subject to fingerprinting.

A. Employees Having Direct Contact With Minors. It is the policy of the City of Stockton to obtain criminal history information for all prospective, as well as current, full-time (including provisional and temporary), part-time, volunteer (including the San Joaquin County Alternate Work Program or any other community service or volunteer organization), and contractual employees in any department who have direct contact[1] with minors. This requirement shall be a condition of employment for all employees who have direct contact with minors.

The City of Stockton will not hire or retain any person or permit any person to volunteer his/her services to work with children in any department who has been convicted of certain criminal offenses (disqualifiers), as specified in California Public Resources Code section 5164.

1 "Direct Contact" is defined in section II.B.

B. Employees Performing Sensitive Duties. In addition, to implement Stockton Municipal Code Chapter 2.70, the City of Stockton will obtain criminal history information for all persons applying for positions that require the employee to:

1. Perform sensitive and/or fiduciary duties, such as handling public funds or confidential documents.

2. Enter privately owned property, structures, or curtilages.

3. Care for ill, injured, or incapacitated members of the public.

4. Have access to a secure facility.

5. Have direct contact with minors. "Direct contact with a minor" shall mean any of the following, in the course of paid or unpaid work:

   a. The care, supervision, guidance, or control of a minor on any basis.

   b. Close physical proximity to a minor on more than an "occasional" or "incidental" basis.

   c. Talking face-to-face with or within eye contact of a minor on more than an "occasional" or "incidental" basis.

   "Occasional" shall mean irregular or infrequent. "Incidental" shall mean occurring by chance or in isolation. If the job specifications for apposition requires contact with a minor on any basis, then the contact is neither "occasional" nor "incidental."

C. The City of Stockton, in its discretion, may refuse to hire any person or permit any person to volunteer his/her services who has been convicted of any of the offenses (disqualifiers) specified in Appendix A of this policy.

D. In making any employment or retention decision based upon a disqualifier, the Director of Human Resources shall consider, among other factors: the employment classification to which the person is applying or being certified, including its sensitivity; the nature and seriousness of the conduct; whether there is a rational relationship between the employment duties and the nature of the conduct; the circumstances surrounding the conduct; the recentness of the conduct; the age of the individual at the time of the conduct; and the presence or absence of rehabilitation or efforts at rehabilitation.

E. Submission of fingerprints, as specified in the sections above, shall be a condition of employment.

F. This policy shall not apply to one-day events or programs.

G. This policy shall be administered by and is the responsibility of the Director of Human Resources.

III. PROCEDURES

A. Administration of Criminal Offense Record Information (CORI).

1. The Human Resources Department shall enter into an agreement with the California Department of Justice for the purpose of electronically exchanging criminal offender information. This information shall be accessible only to designated individuals in the Human Resources Department, and the affected computer terminal shall be located in a secure area to provide protection from unauthorized access. CORI shall be made available to the City Auditor and designated members of his/her staff for the sole purpose of performance audits in accordance with Stockton Municipal Code section 2.70.020(B).

a. Security. Any questions regarding the release, security, and privacy of CORI shall be resolved by the Director of Human Resources.

b. Destruction. CORI shall be destroyed after the employment determination has been made, and copies of the CORI information will be destroyed in such a way that the employee's name can no longer be identified.

c. Dissemination. CORI shall be used only for the purpose for which it was requested; except that, the City Auditor shall have access to and shall examine CORI in connection with his/her duties under section 1501(d) of the City Charter.

d. Storage. CORI shall be securely maintained and accessible only to the Director of Human Resources or his/her designees and the City Auditor or his/her designees, who are committed to protect such information from unauthorized access, use, or disclosure.

e. Reproduction. CORI shall not be reproduced for secondary dissemination.

f. Subsequent Arrest Reports. Any Subsequent Arrest Reports for separated employees, volunteers, and contract personnel shall be immediately returned to the Department of Justice.

2. The Director of Human Resources and/or his/her designees who are involved in the administration of this policy, and the City Auditor and/or his/her designees who conduct performance audits, shall be fingerprinted and cleared by the Department of Justice prior to attaining access to CORI. Each employee given CORI access shall be fingerprinted and processed through the California Department of Justice. In addition, those employees shall execute a copy of the Employment Statement issued by the Department of Justice, which

statement shall be maintained on file in the Human Resources Department.

B. Fingerprint Procedures and Review of CORI. All applications for employment and requests to volunteer services, without exception, are to be made to the Human Resources Department.

1. All applicants for employment covered under this policy (as set forth in sections II. A and B, above), including part-time, volunteer, intern, temporary agency, and contract personnel, shall be provided with a fingerprint application and required to submit one set of fingerprints to the Department of Justice prior to the pre-employment physical examination. (Note: This requirement shall not apply to those concessionaires who contract with the Community Services Department solely to rent space to conduct their own business.)

2. The applicant, volunteer, intern, temporary agency, or contract personnel shall hand-carry the fingerprint application, along with a valid California driver's license or identification card, to the Stockton Police Department Evidence Identification Section to complete the fingerprint process.

3. Upon receipt of CORI, including Subsequent Arrest Information, the designated Human Resources employees shall review the information for any arrests or convictions for disqualifiers. If there are no disqualifiers, the clearance date shall be entered into the confidential database set up for this specific purpose. Upon the employee's separation from City service, the California Department of Justice shall be notified of the separation to ensure that Subsequent Arrest Notifications are no longer received.

4. In the event CORI, including Subsequent Arrest Information, reveals disqualifiers, the Director of Human Resources shall evaluate the effect and potential effect of the employee's record of arrest on his/her position of employment, fellow employees, and the public in accordance with sections II.B.2, above; and shall take appropriate

action to maximize public safety and minimize potential liability while respecting the rights of the employee or volunteer. No applicant for employment will be permitted to report for work until the Director of Human Resources, or his or her designee, has first determined from review of the CORI information that the applicant has no disqualifying convictions.

In addition, any employee, volunteer, intern, temporary agency or contract personnel who has direct contact with minors and for whom a disqualifier is subsequently revealed shall be subject to any one of the following actions:

a. Transfer to a comparable position whose duties require no direct contact with children.

b. Reassignment to another department.

c. Placement back into a previously held position.

d. Termination.

5. The notice of rejection of application for employment or the notice of termination due to disqualifiers is the sole responsibility of the Human Resources Department. The Human Resources Department will immediately notify the Department of Justice that the affected applicant, employee, or volunteer has been rejected and that subsequent reports are not necessary.

6. The appointing authority shall not make a hiring decision until after CORI has been received and reviewed by the Human Resources Department.

7. The applicant, employee, or volunteer shall be responsible for reporting any conviction or arrest pending final adjudication to the Human Resources Department. If any conviction or arrest pending adjudication occurs while the employee or volunteer is working for the

City, the employee or volunteer shall report that conviction or arrest to the Human Resources Department. Failure to report an arrest or conviction shall be grounds for disciplinary action, up to and including termination.

8. Employees transferring or promoting to positions covered under this directive shall have a right of reversion to a previously held position in the event subsequent arrest information reveals a disqualifier; EXCEPT THAT the City reserves its right to discipline an employee, up to and including termination, pursuant to the City Charter, Stockton Municipal Code, Civil Service Rules, collective bargaining agreements, and/or any applicable laws or regulations.

IV PENALTIES

A. Misuse of CORI is a criminal offense, which may result in criminal or civil prosecution and may result in administrative action up to and including loss of access to information maintained by the Department of Justice and/or termination of employment, in accordance with City Charter sections 1201(a) and 1502, Administrative Directive No. HR-008, applicable memoranda of understanding, and/or the Civil Service Rules and Regulations.

B. Any violation of this policy shall result in disciplinary action, up to and including termination from City service.

APPROVED:

KURT O. WILSON
CITY MANAGER

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APPENDIX A

Convictions for which an applicant may be rejected, or for which refusal of certification for appointment, or termination of employment may result, are as follows:

Crimes Against Persons

- Murder (Penal Code § 187, *et seq.)*
- Voluntary manslaughter (Penal Code § 191.5, *et seq.)*
- Mayhem (Penal Code § 203, *et seq.)*
- Torture (Penal Code § 206, *et seq.)*
- Robbery (Penal Code § 211, *et seq.)*
- Assault and/or battery (Penal Code §§ 240, *et seq.;* 243, *et seq.)*
- Rape (Penal Code §§ 261-263; 269.)
- Kidnapping (Penal Code § 207, *et seq.)*
- Prostitution (Penal Code §§ 266-267)
- Lewd or lascivious acts (Penal Code §§ 288, 288.2)
- Indecent exposure (Penal Code § 314)
- Stalking (Penal Code § 646.9, *et seq.)*
- Registered sex offender (Penal Code § 290)
- Child abandonment (Penal Code § 271, *et seq.)*
- Contributing to the delinquency of a minor (Penal Code § 272, *et seq.)*
- Incest (Penal Code § 285)
- A criminal violation that is substantially similar in nature to any of the foregoing crimes against persons.

Crimes Against Property

- Arson (Penal Code § 451, *et seq.)*
- Theft / Larceny (Penal Code § 484, *et seq.)*
- Burglary (Penal Code § 458, *et seq.)*
- Forgery (Penal Code § 470, *et seq.)*
- Embezzlement (Penal Code § 503, *et seq.)*
- Identity theft (Penal Code § 530.5, *et seq.)*

- Extortion *(*Penal Code § 581, *et seq.)*
- A criminal violation that is substantially similar in nature to any of the foregoing crimes against property.

Crimes involving Controlled Substances

Any crime described in the California Uniform Controlled Substance Act (division 10, commencing with section 11350), except where consideration of such conviction for employment purposes is prohibited or otherwise limited by law per Labor Code § 432.8. Employers are prohibited from considering marijuana related convictions which are more than two (2) years old. Specifically, agencies may not consider marijuana related convictions for violations of subdivision (b) or (c) of section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of section 11360 of the Health and Safety Code, or section 11364, 11365, or 11550 as related to marijuana prior to January 1, 1976, or a statutory predecessor thereof.

Miscellaneous Crimes

- Perjury *(*Penal Code § 118, *et seq.)*
- Falsifying/Tampering with Evidence *(*Penal Code §§ 132-135.5*)*
- Falsifying public documents *(*Penal Code § 112, *et seq.)*
- Bribery *(*Penal Code §§ 68, 92, *et seq.*, 165*)*
- Money laundering *(*Penal Code § 186.9, *et seq.)*
- Bookmaking *(*Penal Code § 337a*)*
- Misappropriation of public funds *(*Penal Code § 424, *et seq.)*
- A criminal violation that is substantially similar in nature to any of the foregoing miscellaneous crimes.