

TAB 1

POINT PAPER
CRIMINAL HISTORY RECORD CHECKS
FOR CURRENT CITY EMPLOYEES
March 17, 2008 Workshop Meeting

Issue: City Commission has inquired as to whether the City of Palmetto may require that current employees undergo a criminal background check as a condition of continuing employment with the City.

Brief answer: While it is legal to require criminal background checks of all current City employees, a large number of jurisdictions have chose only to require checks for persons in positions deemed to be critical to the public safety.

Background: The City Clerk reports that the City of Palmetto has required criminal background screening for approximately the last 18 months. This means that the majority of City employees have not been screened. The Police Chief reports that the cost of screening current employees who have not previously undergone a criminal background check is not overly burdensome.

Discussion: Chapter 166, Florida Statutes, provides as follows:

§ 166.0442. Criminal history record checks for certain municipal employees and appointees

Notwithstanding chapter 435, a municipality may require, by ordinance, employment screening for any position of municipal employment or appointment which the governing body of the municipality finds is critical to security or public safety, or for any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility that the governing body of the municipality finds is critical to security or public safety. The ordinance must require each person applying for, or continuing employment in, any such position or having access to any such facility to be fingerprinted. The fingerprints shall be submitted to the Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check. The information obtained from the criminal history record checks conducted pursuant to the ordinance may be used by the municipality to determine an applicant's eligibility for employment or appointment and to determine an employee's eligibility for continued employment. This section is not intended to preempt or prevent any other

background screening, including, but not limited to, criminal history background checks, that a municipality may lawfully undertake.

While the above statutory language makes it clear that municipalities have broad discretion in implementing criminal background screening procedures, the provision expressly authorizes such screening for positions deemed by the municipality to be "critical to security or public safety". A large number of jurisdictions require screening only for certain positions. A municipality's designation of positions subject to screening should be based on reasonable and clearly articulated criteria. The list of positions may include not only employees, but also City officials, contractors, licensees and volunteers.

Below are categories or positions selected by other municipalities to be subject to criminal background checks:

- Law Enforcement
- Employees who have direct contact with minors by virtue of their employment
- Employees who have access to private or secure property by virtue of their employment
- Employees who have access to controlled substances
- Employees that handle cash
- Employees that have access to personal data such as social security numbers, health information, drivers license numbers, etc.
- Individuals receiving any type of license from the municipality
- Contractors
- Volunteers
- City Officers
- Employees considered to be managers
- Employees who work with heavy equipment or machinery
- Employees who's position requires any type of driver's license
- Employees requesting transfer / promotion

Although Commissioners unquestionably have the authority to require criminal background checks of all current employees, the tougher question is "What does the City do upon discovering that an employee has been convicted of a crime?" There is no one answer or set of rules that can be incorporated into the City's Personnel Policy. Each case must be independently reviewed and decided based on its unique facts and circumstances. Factors to be considered, for instance, may include the following: Nature of offense, nature of job duties, length of time since offense, age of employee when offense committed, and job performance since time of offense. City staff reviewing background information should keep in mind the purpose and intent of background checks - - to determine an applicant's eligibility for employment or appointment, or to

determine a current employee or appointee's eligibility for continued employment. In all cases the results shall be handled in a fair and professional manner. Policies and procedures should be adopted to prevent or discourage any improper or unauthorized use of the results by any City employee or representative.

**Summary of Background Checks for City Employees
As of March 2008**

	Full Time Employees	Part Time Employees	Total Employees	Background Check Performed	Background Checks Not Performed
Police Department	48	6	54	54	0
Public Works	67	1	68	9	59
City Hall	20	0	20	7	13
CRA	3	1	4	1	3
	138	8	146	71	75

Cost per background Check \$ 53.25
 Employees without Background Checks 75
 Total Cost if Checks are performed on re \$ 3,993.75

Assumptions:

- Mayor and Commission are excluded from numbers above
- Police Department performs background checks on all police department applicants
- City Hall began performing background checks for new hires (except police) as of October 2006
- City Hall performs background checks using FDLE Volunteer and Employee Criminal History System (VECHS) program