

TAB 12

**Employee Background Checks  
October 6, 2008**

**POINT PAPER**

**Issue:** Criminal background checks of city employees.

**Background:**

Early this year, the Commission asked staff to investigate the pros and cons associated with performing criminal background checks on all city employees. This topic was previously discussed by the Commission on March 17, 2008, and May 19, 2008. Upon the recommendation of the City Attorney, Commission retained Wendy Smith, an employment attorney with experience representing public entities and requested that she provide a written opinion as to the risks associated with requiring criminal background checks of city employees. Ms. Smith's August 21, 2008 opinion letter was provided to Commissioners several weeks ago. She will attend the October 6, 2008 workshop meeting to address the matters discussed therein in more detail. Significant issues to be considered by the Commission may include the following:

- Should the City require current employees to be screened, or only those employees who consented to screening as part of the application process?
- Should the City require periodic screening as a condition of continuing employment?
- Should the City screen all employees or only those holding or applying for certain employment classifications (i.e., those who work around youth, have access to private property, have access to the public water supply, etc.)
- Should screening conducted by the City retrieve history dating back a specified number of years, or retrieve all history?

**Alternatives:**

1. Instruct staff to continue the current practice of performing background checks on all new hires.
2. Instruct staff to continue performing background checks on all new hires and work with the City Attorney to develop specific guidelines concerning background checks on current employees.
3. Instruct staff to continue the current practice of background checks for new hires and also perform background checks for all existing employees who do not have a background check on file.

**Recommendation:**

Alternative #2

**Budget Impact:**

Staff currently budgets for background checks associated with new hires. Staff also budgeted \$4,500 in FY2009 for background checks on exiting employees.

## City of Palmetto Background Check Policy

### 1. PURPOSE AND INTENT

The purpose of this policy is to provide uniform procedures for performing criminal background checks on potential and current employees of the City. The policy is intended to provide the City with a means of ensuring that no potential or current employees pose a threat to public safety or security, and that potential and current employees are properly qualified for the positions they hold with the City. This policy shall apply to employees of the City of Palmetto Police Department except as expressly stated herein.

### 2. AUTHORITY

This policy is adopted by City Commission pursuant to and consistent with sections 166.0442 and 112.011, Florida Statutes.

### 3. DIRECTION

The Human Resources Director and the appropriate Department Head will review all background checks.

### 4. METHOD OF OPERATION

Level 2 criminal background checks, as defined by section 435.04 of Florida Statutes, as amended, shall be conducted on all applicants for employment with the City and on current employees as a term and condition of continued employment. In addition, all employees must notify their Supervisor or Department Head within two (2) working days of a conviction of any crime, or of an arrest for any of those crimes listed on **Exhibit A**, attached hereto and incorporated herein. (For purposes of this policy, conviction includes pleading guilty, or nolo contendere, regardless of adjudication.) Failure to comply will result in disciplinary action, up to and including termination. When considering an employee's failure to comply, the Department Head shall take into account whether the employee was incarcerated or otherwise unable to provide timely notification. The Department Head shall immediately notify the Human Resources Director of the conviction or arrest for a crime listed in **Exhibit A**, attached hereto and incorporated herein.

The initial determination of whether a conviction or an arrest for any of those crimes listed on Exhibit "A" may affect initial or continued employment will be made by the Human Resources Director and appropriate Department Head. Each conviction or arrest for any of those crimes listed on Exhibit "A" will be considered on an individual, case-by-case basis, with attention being given to the nature and seriousness of the crime, the time elapsed from the conviction date, relevance to the

applicant's or employee's job duties, job location, and the term and nature of an employee's service to the City. Any action recommended by the Human Resources Director and the appropriate Department Head shall be reviewed by the City Attorney and approved by the Mayor.

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Employees arrested for a crime listed on Exhibit "A" shall be suspended with pay or, after following the procedures provided in Section 5.02 of the Personnel Policy Manual, may be suspended without pay after notification to the City by the employee in order to allow the City to evaluate the affect on the employee's employment status based on the criteria set forth herein.

Employees convicted of any crime listed on **Exhibit A** may be suspended without pay in accordance with the procedures provided in Section 5.02 of the Personnel Policy Manual until the City's determination of final action. Final action taken by the City shall be evinced in writing and provided to the employee.

## 5. GUIDELINES

The below general guidelines shall be used to evaluate whether and to what an extent conviction of a crime impacts an employee's qualification for service with the City.

### A. Positions that involve close contact with private property, children, or individual members of the public

In furtherance of public security and recognition of the fact that certain staff positions within the City (1) provide employees with access to private property, (2) place employees in proximity to children, and (3) require employees to work in locations or on shifts where there is little or no supervision, employees serving in the following position may be disqualified from employment if they have pled guilty, or nolo contendere, or been adjudicated guilty of any of the crimes or have been arrested for any of the crimes listed on Exhibit A, attached hereto and incorporated herein, provided that the crime is classified, or was classified at the time of offense, as a felony or first degree misdemeanor. Disqualification may result in action including but not limited to demotion, job change or termination.

### B. Positions that handle money or negotiable instruments

Employees serving in the following positions may be disqualified from employment if they have been convicted of any of the following crimes, provided that the crime is classified, or was classified at the time of offense, as a felony or first degree misdemeanor. . Disqualification may result in action including but not limited to demotion, job change or termination.

1. Possession, sale, manufacture, or delivery of a “controlled substance” as defined in Chapter 893, Florida Statutes
2. Theft
3. Robbery
4. Fraud
5. Embezzlement
6. Any other felony or first degree misdemeanor evidencing dishonesty (uttering a forged document, etc.)

C. Positions that require a valid driver’s license or operation of a City vehicle

Employees serving in the following positions may be disqualified from employment if they have been convicted of any of the following crimes, provided that the crime is classified, or was classified at the time of offense, as a felony or first degree misdemeanor. Disqualification may result in action including but not limited to demotion, job change or termination.

1. Driving under the influence
2. Leaving the scene of a crash involving a death or personal injury
3. Any other felony or first degree misdemeanor resulting in suspension or forfeiture of one’s driver’s license.

D. Positions that have access to sensitive information

Employees with access to sensitive information may be disqualified from employment if they have been convicted of any of the following crimes, provided that the crime is classified, or was classified at the time of offense, as a felony or first degree misdemeanor. Disqualification may result in action including but not limited to demotion, job change or termination. For purposes of this subsection “sensitive information” includes social security numbers, bank account numbers, information protected by HIPPA, criminal background reports, and any other information determined by the City Clerk and to be critical to the safety and welfare of individuals or the general public. All such determinations must be in writing.

1. Theft
2. Robbery

3. Fraud
4. Embezzlement
5. Any other felony or first degree misdemeanor evidencing dishonesty (uttering a forged document, etc.)

THESE GUIDELINES ARE NOT ALL INCLUSIVE. ALL CONVICTIONS WILL BE REVIEWED BY THE HUMAN RESOURCES DIRECTOR IN CONSULTATION WITH THE APPROPRIATE DEPARTMENT HEAD AND CITY ATTORNEY. EACH PLEA OF GUILTY OR NOLO CONTENDERE, OR ADJUDICATION OF GUILT, WILL BE CONSIDERED ON A CASE-BY-CASE BASIS FOR CONFORMANCE WITH FLORIDA LAW AND CONSISTENCY WITH THE BEST INTERESTS OF THE RESIDENTS AND EMPLOYEES OF THE CITY OF PALMETTO.

**EMPLOYEES CONVICTED OF ANY CRIME LISTED ON EXHIBIT A MAY BE SUSPENDED WITHOUT PAY PENDING THE CITY'S DETERMINATION OF FINAL ACTION. FINAL ACTION TAKEN BY THE CITY SHALL BE EVINCED IN WRITING AND PROVIDED TO THE EMPLOYEE.**

Adopted by City  
Commission on: \_\_\_\_\_

Last Revised: \_\_\_\_\_

Background Check Policy

**EXHIBIT A**

The following references are to Florida Statutes, as amended from time to time:

Section 415.111, relating to adult abuse, neglect, or exploitation of aged or disabled persons.

Former section 748.011, relating to assault, if the victim of the offense was a minor.

Section 782.04, relating to murder.

Section 782.07, relating to manslaughter.

Section 782.071, relating to vehicular homicide.

Section 782.09, relating to killing of an unborn child by injury to the mother.

Section 783.03, relating to battery, if the victim of the offense was a minor.

Section 784.021, relating to aggravated assault.

Section 784.045, relating to aggravated battery.

Section 787.01, relating to kidnapping.

Section 787.02, relating to false imprisonment.

Section 794.011, relating to sexual battery.

Former section 794.041, relating to prohibited acts of persons in familial or custody authority.

Chapter 796, relating to prostitution.

Section 798.02, relating to lewd and lascivious behavior.

Chapter 800, relating to lewdness and indecent exposure.

Section 806.01, relating to arson.

Section 812, relating to theft, robbery, and related crimes.

Section 825.102, relating to abuse or neglect of an elderly person or disabled adult.

Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.

Section 825.103, relating to exploitation of an elderly person or disabled adult.

Section 826.04, relating to incest.

Section 827.03, relating to aggravated child abuse.

Section 827.05, relating to negligent treatment of children.

Section 827.071, relating to sexual performance by a child.

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