

CHAPTER ONE: GENERAL PROVISIONS

Subchapter 1.16: Criminal History Information and Access

1.16.010 Authorization

The Town of Colma is hereby authorized to have access to criminal history information, including state and local summary criminal history information, and federal level criminal history information from the Department of Justice and the Federal Bureau of Investigation. Such information shall be used by the Town of Colma in fulfilling employment, certification, and licensing duties as provided for in this subchapter, subchapter 3.02 Employment, Colma Municipal Code subchapter 4.09 Gambling Establishments, and where authorized by law or the Colma Municipal Code or Administrative Code. Such authority must be exercised in a manner consistent with the provisions of this Subchapter and the laws of the State of California.

[*History*: Res 2014-32, 6/11/14]

1.16.020 Limitations Regarding Criminal History Information

(a) The Town shall not ask an applicant for employment to disclose any of the following, and shall not use any of the following to hire, promote, terminate, or select an applicant for an apprenticeship training program, or other training program:

- (1) Information concerning an arrest or detention that did not result in conviction.
- (2) Information concerning a referral to or participation in any pretrial or post trial diversion program.
- (3) Information regarding a conviction that has been judicially dismissed or ordered sealed pursuant to law.
- (4) Information regarding a conviction of a marijuana related offense, if it has been two years from the date of such conviction, under 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 of the Health and Safety Code as they related to marijuana prior to January 1, 1976.

(b) The Town shall not ask an applicant for employment to disclose information regarding a criminal conviction, including on a Town job application, until such time as the Town has determined the applicant meets the minimum employment qualifications as stated in any notice issued for the position.

(c) The restrictions detailed in this section shall not apply to the Town's selection of peace officers, or any other person seeking employment with the Town Police Department, or if the Town is otherwise authorized by state or federal law to ask for such information.

(d) Nothing in this section shall preclude the Town from asking an applicant for employment about an arrest where the applicant is out on bail or on his or her own recognizance pending trial as it may bear on his or her ability to do the work.

[History: Res 2014-32, 6/11/14]

1.16.030 Presumption of Unfitness for Certain Independent Contractors

(a) In performing the function of approving the qualifications of an independent contractor to serve the Town, the City Manager shall determine whether each of the independent contractor's employees is fit for the position for which the employee is being considered. An independent contractor may be disqualified from consideration because the owner(s), or any managing employee who will be servicing the Town, has a criminal record that indicates that he or she may be unfit for the position. An employee of an independent contractor may be disqualified from consideration because the employee has a criminal record that indicates that he or she is unfit for the position.

(b) Independent contractors, and their employees, with access to Town facilities or working in proximity minors, will be presumed to be unfit if they have been convicted of a felony or a misdemeanor involving moral turpitude.

[History: Res 2014-32, 6/11/14]

1.16.040 Rebuttal of the Presumption

If a presumption is established that an independent contractor is unfit for a position, the presumption may be rebutted in the following manner by any of the following factors or a combination thereof:

(a) *Time elapsed since conviction:* Where, in the judgment of the City Manager, the conviction occurred so long ago and was an isolated incident in the remote past, the City Manager may, in his/her discretion, determine that the conviction is not grounds for disqualification and deem the presumption to be rebutted.

(b) *Age at time of conviction:* Where, in the judgment of the City Manager, the conviction came when the applicant was young and appears to be caused by a lapse or absence of mature judgment, the City Manager may, in his/her discretion, determine that the conviction is not grounds for disqualification and deem the presumption to be rebutted.

(c) *Rehabilitation:* If, in the judgment of the City Manager, there is affirmative evidence that the applicant has been rehabilitated and is no longer likely to exercise similar criminal behavior, the City Manager may, in his/her discretion, determine that the conviction is not grounds for disqualification and deem the presumption to be rebutted.

(d) *Nexus:* If, in the judgment of the City Manager, the conviction is not related to and would not impact the scope of duties, the City Manager may, in his/her discretion, determine that the conviction is not grounds for disqualification and deem the presumption to be rebutted.

[History: Res 2014-32, 6/11/14]

1.16.050 Regulations Regarding Security of Criminal Offender Record Information

The City Council may, by resolution, promulgate regulations regarding security of criminal offender record information.

[History: Res 2014-32, 6/11/14]

1.16.060 Criminal Record Security Officer

The Chief of Police is hereby designated Criminal Record Security Officer. The Criminal Record Security Officer shall have the authority and responsibility to see that all regulations promulgated pursuant to this ordinance are adhered to.

[History: Res 2014-32, 6/11/14]