



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: POLICE DEPARTMENT

Prepared by: David Spiller,  
Police Chief

City Manager Approval: \_\_\_\_\_

**TOPIC: AUTHORIZATION FOR BACKGROUND CHECKS**

**SUBJECT: CITY COUNCIL AUTHORIZATION FOR BACKGROUND CHECKS FOR CITY EMPLOYMENT AND CITY LICENSES**

1. AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL ADDING CHAPTER 2.22 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED "BACKGROUND CHECKS"
2. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE CITY TO ACCESS STATE AND FEDERAL SUMMARY CRIMINAL HISTORY FOR NEW EMPLOYEE AND LICENSEE BACKGROUND INFORMATION THROUGH THE DEPARTMENT OF JUSTICE

**RECOMMENDATION:**

- Hold a public hearing and:
1. Pass the ordinance to print.
  2. Adopt the resolution.

**BACKGROUND:**

Since 2008, the City has implemented an administrative policy to take fingerprints and run a background check on every applicant who has accepted employment with the City. This policy was adopted to facilitate state requirements for a background check prior to employment in certain types of positions with the City. Certain City-issued licenses and certifications, such as the Cannabis Operator's License and the Massage Therapist Certification, also depend on the applicant passing a background check.

California Penal Code Sections 11105(b)(11) and 13399(b)(11) authorize cities to access state and local summary criminal history information for employment, licensing or certification purposes; and further authorize cities to access federal level criminal history for those purposes by transmitting

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**FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

Council Meeting: \_\_\_\_\_

Disposition: \_\_\_\_\_

fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation (FBI).

Recently, the federal government has strengthened its requirements for obtaining access to the national criminal database, requiring specific authorization by a city's city council to receive such information. The City of San Rafael is therefore required to have specific City Council authorization in order to continue its practice of conducting background checks prior to City employment and licensing.

**ANALYSIS:**

The City's Police Department obtains state criminal history information by transmitting fingerprints to the California Department of Justice. When a check against the national criminal database is required, as it typically is, the State acts on the City's behalf and transmits the fingerprints to the federal Department of Justice for a report from the FBI. The City has been advised by the State that the FBI is now requiring such requests to be authorized by both an ordinance and a resolution of the City Council. While normally, both a resolution and an ordinance are not required to implement a City Council action, the FBI is requiring both in this case.

The attached ordinance and resolution authorize background checks to be conducted prior to any employment with the City, and also when the City's Municipal Code requires a successful background check prior to issuance of, or as a condition of holding, a City-issued license, permit, or certificate. Adoption of the ordinance and resolution merely formalizes the authority for Police Department staff to continue its longstanding practice of conducting background checks for these purposes.

If approved, the attached resolution will be immediately effective, and the ordinance will return to the City Council for final adoption at its next regular meeting.

**FISCAL IMPACT:**

There is no fiscal impact associated with the recommended actions. Police Department staff already takes fingerprints and conducts the background checks.

**OPTIONS:**

The City Council has the following options to consider on this matter:

1. Pass the ordinance to print and adopt the resolution authorizing background checks.
2. Direct staff to return with more information.
3. Take no action.

**RECOMMENDED ACTION:**

1. Pass to print the Ordinance adding Chapter 2.22 to the San Rafael Municipal Code, entitled "Background Checks."
2. Adopt the Resolution authorizing the City to access state and federal summary criminal history for new employee and licensee background information through the Department of Justice.

**ATTACHMENTS:**

1. An Ordinance of the City of San Rafael City Council Adding Chapter 2.22 to the San Rafael Municipal Code, Entitled "Background Checks"
2. A Resolution of the City Council of the City of San Rafael Authorizing the City to Access State and Federal Summary Criminal History for New Employee and Licensee Background Information Through the Department of Justice

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL ADDING  
CHAPTER 2.22 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED  
“BACKGROUND CHECKS”**

**Section 1. Findings.**

**WHEREAS**, Penal Code Sections 11105(b)(11) and 13399(b)(11) authorize cities to access state and local summary criminal history information for employment, licensing or certification purposes; and

**WHEREAS**, Penal Code Section 11105(b)(11) also authorizes cities to access federal level criminal history by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

**WHEREAS**, Penal Code Section 11105(b)(11) and 13300(b)(11) require the City Council to specifically authorize access to summary criminal information for employment, licensing, or certification purposes; and

**WHEREAS**, the City Council has not yet specifically authorized access to summary criminal information for all employment, licensing, or certification purposes.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
DOES ORDAIN AS FOLLOWS:**

**Section 2: Addition of Chapter 2.22 to the San Rafael Municipal Code.**

Title 2 of the San Rafael Municipal Code, entitled “Administration” is hereby amended by adding a new Chapter 2.22 entitled “Background Checks” to read in its entirety as follows:

**2.22.010. Background Checks Required.**

California Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize city authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and authorize access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), such background checks shall be conducted as follows:

- A. A background check is authorized to be conducted prior to any type of employment by the City of San Rafael, including for volunteer and independent contractor positions. No person shall be employed by the City of San Rafael if the applicant has been convicted of an offense that is substantially related to the qualifications, functions, or

duties of the employment position, as determined by the police chief or his/her designee.

- B. A background check is authorized to be conducted prior to issuance of any City license, permit, or certification where this Code prohibits issuance or holding of the license, permit, or certification based on specific criminal conduct on the part of the subject of the record.

**Section 3. Severability.** If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

**Section 4. Compliance with CEQA.** The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment, and pursuant to CEQA Guidelines section 15183 (consistent with the general plan and zoning).

**Section 5. Publication; Effective Date.** A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of the Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

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Kate Colin, Mayor

ATTEST:

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LINDSAY LARA, City Clerk

The foregoing Ordinance No. \_\_\_\_\_ was read and introduced at a regular meeting of the City Council of the City of San Rafael on \_\_\_\_\_, the \_\_\_\_ day of \_\_\_\_\_ 2021, and was ordered passed to print by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the \_\_\_\_ day of \_\_\_\_\_, 2021.

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LINDSAY LARA, City Clerk

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL  
AUTHORIZING THE CITY TO ACCESS STATE AND FEDERAL SUMMARY  
CRIMINAL HISTORY FOR NEW EMPLOYEE AND LICENSEE BACKGROUND  
INFORMATION THROUGH THE DEPARTMENT OF JUSTICE**

**WHEREAS**, Penal Code Sections 11105(b)(11) and 13399(b)(11) authorize cities to access state and local summary criminal history information for employment, licensing or certification purposes; and

**WHEREAS**, Penal Code Section 11105(b)(11) also authorizes cities to access federal level criminal history by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

**WHEREAS**, Penal Code Section 11105(b)(11) and 13300(b)(11) require the City Council the specifically authorize access to summary criminal information for employment, licensing, or certification purposes; and

**WHEREAS**, the City Council has not yet specifically authorized access to summary criminal information for employment, licensing, or certification purposes.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of San Rafael that the City of San Rafael is hereby authorized to access state and federal level summary criminal history information for employment (including volunteers and contract employees) purposes, and for licensing, permitting, and certification purposes where required by the San Rafael Municipal Code or other applicable ordinances, and may not disseminate the information to a private entity.

**I, LINDSAY LARA**, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on the 16<sup>th</sup> day of August 2021, by the following vote:

**AYES: COUNCIL MEMBERS:**

**NOES: COUNCIL MEMBERS:**

**ABSENT: COUNCIL MEMBERS:**

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**Lindsay Lara, City Clerk**

**CITY OF SAN RAFAEL**  
**NOTICE OF PUBLIC HEARING**

**CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
SAN RAFAEL ADDING NEW CHAPTER 2.22 TO THE SAN RAFAEL MUNICIPAL  
CODE, ENTITLED "BACKGROUND CHECKS"**

- DATE/TIME/PLACE: Monday, August 16, 2021  
**COVID-19 ADVISORY NOTICE:** *Consistent with Executive Orders No.-25-20 and No. N-29-20 from the Executive Department of the State of California and the Marin County March 16, 2020 Shelter in Place Order, the San Rafael City Council hearing WILL NOT be physically open to the public and the meeting will be streamed live to YouTube at: [www.youtube.com/cityofsanrafael](http://www.youtube.com/cityofsanrafael). Instructions on how to participate online, will be available on the YouTube channel.*
- PURPOSE: To receive public comments and consider the adoption of an ordinance adding a new Chapter 2.22 to the San Rafael Municipal Code entitled "Background Checks". The proposed ordinance would require that a criminal background check be conducted prior to employment with the City of San Rafael, and where required under the San Rafael Municipal Code in connection with an application for a City license, permit or certification.
- IF YOU CANNOT ATTEND: You can send written correspondence by email to [city.clerk@cityofsanrafael.org](mailto:city.clerk@cityofsanrafael.org), or by mail/hand delivery to the Office of the City Clerk, City of San Rafael, 1400 5<sup>th</sup> Ave., San Rafael, CA 94901.
- FOR MORE INFORMATION: Contact Lieutenant Dan Fink, San Rafael Police Department, at 415-485-3148, or at [447@srpd.org](mailto:447@srpd.org)

SAN RAFAEL CITY COUNCIL

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LINDSAY LARA  
CITY CLERK, CITY OF SAN RAFAEL