RECOMMENDATION

Adopt a Resolution (Attachment A) authorizing the City of San Luis Obispo (City) to access state and federal summary criminal history information for employment purposes for those positions with potential system or physical access to information from the California Law Enforcement Telecommunications System (CLETS), California Department of Justice (DOJ) “Livescan”, the Department of Motor Vehicles, and Department of Social Services.

DISCUSSION

In August 2019 the City Council adopted Resolution 11034 (2019 Series) which authorized specific Human Resources’ staff to access federal and state summary criminal history information through the DOJ. The final stage of this process is to receive approval of the resolution through the Federal Bureau of Investigation (FBI) to receive this information. When this resolution was sent to the FBI, it was denied due to the language clarifying that the information would be used in employment including “volunteers, supplemental, and contract employees” in the resolution, because supplemental employees are not codified in the Municipal Code. Supplemental is defined in the City Council adopted Supplemental Employee Policy and replaces the use of the term “temporary employee”. Temporary appointments and temporary positions are codified in the Personnel Rules and Regulations; however, the FBI needs the resolution language to be consistent with the Municipal Code. Considering the use of the term “supplemental” was simply to further clarify a type of employment, the clarifying language is not necessary. Therefore, staff is requesting the City Council to approve the Resolution (Attachment A) provided in this staff report, which does not include that clarifying language.

Previous Council or Advisory Body Action

In October 2002 the City Council adopted Resolution 9371 which authorized specific Human Resources staff to access DOJ federal and state summary criminal history information directly as opposed to receiving the information through the Police Department.

In August 2019 the City Council adopted Resolution 11034 (2019 Series) which authorized specific Human Resources’ staff to access federal and state summary criminal history information through the DOJ.
Policy Context

California Law Enforcement Telecommunication System (CLETS) Policies, Practices, and Procedures, Section 1.9.2 Section A:

“All persons, including non-criminal justice, volunteer personnel, private vendor technical or maintenance personnel with physical or logical access to the CLETS equipment, information from the CLETS or to criminal offender record information, are required to undergo, at a minimum, a background state and federal fingerprint-based criminal information search pursuant to the California Code of Regulations, Title 11, Division 1, Chapter 7, Article 1, subsections 703(d) and 707(b).”

Public Engagement

This item is on the agenda for the March 17, 2020 City Council meeting and will follow all required postings and notifications. The public may comment on this item at or before the meeting.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act does not apply to the recommended action in this report, because the action does not constitute a “Project” under CEQA Guidelines Sec. 15378.

FISCAL IMPACT

Budgeted: N/A  
Funding Identified: N/A  
Budget Year: FY 2019/20

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Fiscal Analysis:

There is no fiscal impact related to this request. The expenditure related to running LiveScan services is already included in budgeted recruiting costs.
ALTERNATIVES

The Council could choose to not adopt a resolution authorizing the City to access federal and state summary criminal history information for employment of positions with access to information from the CLETS, California DOJ “Livescan”, the Department of Motor Vehicles, and Department of Social Services record information. This would put the City out of compliance with CLETS requirements.

Attachments:

a - A Resolution of the City Council of the City of San Luis Obispo, California, Authorizing the City to Access State and Federal Summary Criminal History

b - Previous Resolution and Report
RESOLUTION NO. _____ (2020 SERIES)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBIÑPO, CALIFORNIA, AUTHORIZING THE CITY HUMAN RESOURCE’S STAFF TO ACCESS STATE AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY FOR EMPLOYEE BACKGROUND INFORMATION THROUGH THE DEPARTMENT OF JUSTICE

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts, and joint powers authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts, and joint powers authorities to access 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; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of record; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city council, board of supervisors, governing body of a city, county, or district or joint powers authority to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of San Luis Obispo that the City of San Luis Obispo is hereby authorized to access state and federal level summary criminal history information for employment purposes and may not disseminate the information to a private entity.
SECTION 1. Resolution Number 11034 (2019 Series) is hereby rescinded and superseded to the extent inconsistent herewith.

Upon motion of _______________________, seconded by _______________________, and on the following roll call vote:

AYES:
NOES:
ABSENT:

The foregoing resolution was adopted this _____ day of _____________________ 2020.

______________________________
Mayor Heidi Harmon

ATTEST:

______________________________
Teresa Purrington
City Clerk

APPROVED AS TO FORM:

______________________________
J. Christine Dietrick
City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, this _____ day of ________________, 2020.

______________________________
Teresa Purrington
City Clerk
RESOLUTION NO. 11034 (2019 SERIES)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO, CALIFORNIA, AUTHORIZING THE CITY HUMAN RESOURCE’S STAFF TO ACCESS STATE AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY FOR EMPLOYEE BACKGROUND INFORMATION THROUGH THE DEPARTMENT OF JUSTICE

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts, and joint powers authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts, and joint powers authorities to access 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; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of record; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city council, board of supervisors, governing body of a city, county, or district or joint powers authority to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of San Luis Obispo that the City of San Luis Obispo is hereby authorized to access state and federal level summary criminal history information for employment (including volunteers, supplemental, and contract employees) purposes and may not disseminate the information to a private entity.
SECTION 1. Resolution Number 9371 (2002 Series) is hereby amended and superseded to the extent inconsistent herewith.

Upon motion of Council Member Christianson, seconded by Council Member Gomez, and on the following roll call vote:

AYES: Council Members Christianson, Gomez and Stewart
Vice Mayor Pease and Mayor Harmon
NOES: None
ABSENT: None

The foregoing resolution was adopted this 20th day of August 2019.

ATTEST:

Teresa Purrington
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick
City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, this 30 day of August, 2019.

Teresa Purrington
City Clerk
RECOMMENDATION

1. Adopt a Resolution authorizing the City’s Department of Human Resources to access state and federal summary criminal history information for employment purposes for those positions with potential system or physical access to information from the California Law Enforcement Telecommunications System (CLETS), California Department of Justice “Livescan”, and/or the Department of Motor Vehicles, and Department of Social Services; and

2. Adopt a Resolution authorizing the City’s Department of Parks and Recreation to access state and federal summary criminal history information for employment purposes for those positions with potential system or physical access to information from the California Law Enforcement Telecommunications System (CLETS), California Department of Justice “Livescan”, and/or the Department of Motor Vehicles, and Department of Social Services.

DISCUSSION

The City’s Personnel Rules and Regulations (Section 2.36.220 Staffing - Fingerprints) states “Fingerprints shall be taken of all new employees filling line-item and temporary positions and police record checks will be made to verify conviction record information.”

The Department of Human Resources (HR) and the Department of Parks and Recreation are currently registered through the DOJ to receive state and local summary criminal history to obtain background clearance data per Penal Code Section 13300(b)(10). Staff was unable to locate a resolution documenting this authorization for the Department of Parks and Recreation, and as such have attached a resolution to ensure continued compliance. Through a CLETS Audit in the Police Department, it came to staff’s attention that to remain in compliance with CLETS Policies, Practices, Procedures, and Statutes, HR is required to obtain federal summary criminal history information in addition to state and local summary criminal history information for positions that have access to CLETS information. In other words, CLETS requires the City to conduct a higher level of background check on positions that have access to CLETS information including both federal summary criminal history as well as state and local summary criminal history information. Access is defined as system access for employees authorized to access these data bases for various reasons in the course and scope of their employment, including issuance of
tickets or citations, required pre-employment checks, and/or in the review and evaluation of criminal investigation materials. Other positions are not directly accessing the information within the CLETS system but have physical or system access in the course and scope of their responsibilities as they maintain work areas or systems on which CLETS information is accessed or stored. Employees in positions that have either type of access are required to have the more in depth federal, state, and local summary criminal history checks. The Department of Justice (DOJ) requires that the City Council adopt a resolution in order to authorize Human Resources (Attachment A) and Parks and Recreation (Attachment B) to receive this information through LiveScan services. The attached resolutions meet DOJ requirements and will bring the City into full compliance.

Previous Council or Advisory Body Action

In October 2002 the City Council adopted Resolution 9371 which authorized specific Human Resources staff to access DOJ state and local summary criminal history information directly as opposed to receiving the information through the Police Department.

Policy Context

California Law Enforcement Telecommunication System (CLETS) Policies, Practices, and Procedures, Section 1.9.2 Section A:

“All persons, including non-criminal justice, volunteer personnel, private vendor technical or maintenance personnel with physical or logical access to the CLETS equipment, information from the CLETS or to criminal offender record information, are required to undergo, at a minimum, a background state and federal fingerprint-based criminal information search pursuant to the California Code of Regulations, Title 11, Division 1, Chapter 7, Article 1, subsections 703(d) and 707(b).”

Public Engagement

This item is on the agenda for the August 20, 2019 City Council meeting and will follow all required postings and notifications. The public may comment on this item at or before the meeting.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act does not apply to the recommended action in this report, because the action does not constitute a “Project” under CEQA Guidelines Sec. 15378.

FISCAL IMPACT

Budgeted: N/A Funding Identified: N/A

Budget Year: 2019-20
Fiscal Analysis:

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There is no fiscal impact related to this request. The expenditure related to running LiveScan services is already included in budgeted recruiting costs.

**ALTERNATIVES**

1. The Council could choose to not adopt a resolution authorizing the City to access state and federal summary criminal history information for employment of positions with access to information from the California Law Enforcement Telecommunications System (CLETS) and the Department of Motor Vehicles record information. This would put the City out of compliance with CLETS requirements.

2. The Council could modify or limit the positions identified as needing access in the course and scope of their assigned responsibilities for the City and thus reduce the number of positions. This alternative is not recommended as it will require redistribution of workloads.

**Attachments:**

- a - Resolution - Human Resources
- b - Resolution - Parks and Recreation