

CITY OF CHICO
Administrative Procedure and Policy Manual

Subject:		Number: 13-46
CANDIDATE BACKGROUND INVESTIGATION		Effective Date: March 16, 2010
Department(s) Affected: All Departments		Supersedes: 13-46 Dated 2/11/02
Authority: Section 2.12.010 Chico Municipal Code		File Reference:
		Approved:

I. PURPOSE:

To establish a standard practice and procedure for pre-employment review of candidate background which is consistent with laws and regulations which protect the candidate's right to privacy. This procedure and policy applies to all candidates being considered for both permanent or temporary employment by the City.

II. POLICY:

Selection of candidates for appointment to City positions requires review of background information such as employment and personal references, education and certification, credit history, and other factors. All such inquiries shall be made in a manner consistent with the laws and regulations which protect the candidate's right to privacy, and which also provides the information needed to make appropriate decisions regarding candidate selection.

III. PROCEDURE:

A. Determination of Extent of Background Investigation

Human Resources & Risk Management Office staff shall determine the extent and content of the background investigation to be conducted on any candidate for City employment. In some cases a limited background investigation may be required. Some or all of the process may be delegated to consultants or staff from other departments. Any background investigation inquiries conducted by persons outside the Human Resources & Risk Management Office shall be conducted in a manner consistent with this procedure. No information regarding the candidate's medical or disability status (if applicable) shall be requested or obtained as part of the background investigation process prior to the time that a conditional job offer is made to the candidate.

B. Candidate Waiver

Candidates being considered for employment by the City shall be notified of such consideration, and asked to sign the "Authorization to Release Personal/Employment Information" ("Release"), attached as Exhibit 1. No background or reference contacts shall be made prior to completion of the Release form.

C. Police Department Background and Conditions for Use of Polygraph Examination

Because of the unique public safety requirements and additional requirements established by Police Officer Standards and Training Commission ("POST"), the Police Department will conduct background investigations on candidates for positions in the Police Department. An alternative Release form, specific to Police Department use, and consistent with POST requirements, shall be used for background investigations conducted by the Police Department. Use of a polygraph examinations as part of Police Department Background investigations shall be limited to candidates for Police Officer and Reserve Police Officer positions. The polygraph examination process shall be used to encourage truthful answers to questions which measure the candidate's ability to successfully work as a Police Officer or Reserve Police Officer for the City. The background investigation report for Police Department employees shall be maintained in a separate secure and confidential file for a period consistent with POST requirements.

1. Procedure for Use of Polygraph Examination as Part of Candidate Background Investigation

- a. Polygraph examination shall be used in the background investigation process only for the positions of Police Officer and Reserve Police Officer. The purpose of the polygraph examination is to obtain truthful and complete information regarding the candidate's background, which will be the basis of a thorough investigation. Candidates may not be failed solely based on their performance in the polygraph examination. Candidates may be failed as a result of information regarding their background developed through questions asked during polygraph examinations.
- b. Polygraph examinations will be conducted prior to contacting personal and employment references of the candidate, and will not include questions which have the effect of encouraging or requiring disclosure of information regarding the candidate's medical condition or disabilities.
- c. Only candidates who are willing to voluntarily participate in the examination, as evidenced by their signature on Polygraph Release Form, attached as Exhibit 2, shall be subject to such examination.
- d. The City may contract with a qualified polygraph examiner to provide polygraph examination services. To be qualified to conduct a polygraph examination, the examiner must have satisfactorily completed training by a recognized instructor in truth verification and the use of the polygraph. Such qualified examiner must be re-certified every three years.
- e. The polygraph examiner shall not conduct an examination on any person who, in the opinion of the examiner, is physically or mentally unfit. The determination of fitness for polygraph examination shall be made by the qualified polygraph examiner. Any questions regarding health status shall be strictly limited to determining if the candidate should be excluded from the polygraph examination process. The following factors will be considered by the polygraph examiner as conditions which may make someone unfit for polygraph examination:
 - 1. Persons with paralysis.
 - 2. Persons with amputations affecting placement of the polygraph instrument attachments.
 - 3. Persons who have had major surgery within the preceding six months.
 - 4. Persons with extremely high or low blood pressure or those with recent or current cardiac trouble.
 - 5. Persons with severe colds or respiratory disorders.
 - 6. Persons who are narcotic addicts or alcoholics, especially during the "withdrawal period."
 - 7. Persons who exhibit signs of emotional instability resulting from being involved in an incident, especially if the incident was violent in nature and in close proximity to the time of the scheduled examination.
 - 8. Persons who have not had sufficient nourishment or rest.
 - 9. Persons who have low mental ability or who are suffering from a serious mental disorder.
 - 10. Persons who are pregnant.
- f. The polygraph examiner will conduct a structured interview, using pre-formatted questions which have been provided to the candidate just prior to the examination. Candidates will be allowed time to review the questions, and discuss the polygraph examination process with the examiner prior to the start of the examination. The polygraph examiner shall review information regarding the candidate prior to administration of the examination. The polygraph examiner shall refrain from examinations which may compromise his or her integrity, such as examinations of friends, relatives or persons the examiner has a relationship with which creates a conflict of interest.
- g. The Chief of Police or his or her designee shall be notified should it be determined that the polygraph examination can not be conducted on a candidate for any reason. The Chief of Police or his or her designee shall determine if the background investigation shall be continued in the absence of the polygraph examination results. Candidates shall not be excluded from the background process because they are not able to complete the polygraph examination because of their own serious medical condition. However, other disqualifying information developed by the

polygraph examiner during the process of determining the candidate is not eligible for a polygraph examination, or through other contacts, may be disqualifying. Whenever possible, candidates who are temporarily unable to participate in a polygraph examination shall be allowed to reschedule the examination at a time when they expect to be fit for the examination.

- h. The polygraph examiner shall prepare a written report of factual information obtained through the polygraph examination, and indicate if there are any concerns regarding the truthfulness of the response. This written report will be provided to the person who will conduct the remainder of the background investigation. The polygraph examiner's report, along with the Polygraph Release Form, list of questions used, and polygraph graph shall become part of the confidential background investigation file. The polygraph examiner shall be allowed to retain a copy of the polygraph graph, and other materials, so long as the examiner has signed an agreement with the City assuring that such records shall be retained in a secure and confidential manner.

D. Reference Contacts

Staff conducting background investigations shall contact individuals, agencies and businesses who have knowledge regarding the candidate's potential as a City employee. Such contacts may include current and prior employers and supervisors, teachers and instructors, personal references, business references, and others who have personal knowledge of the candidate. A copy of the Release form signed by the candidate will be provided to the reference contact if so requested. The candidate shall have no right to review or receive information provided by those contacted through the reference check process.

E. Credit Checks

It is appropriate to obtain credit history information on certain candidates for City employment. The most obvious positions for which credit history information would be appropriate are those which have responsibility for handling and accounting for City funds. It is also appropriate to obtain credit history information for other positions which represent the City in critical service or management roles. Requests for credit history information shall be made through the recognized vendor. Pursuant to the Fair Credit Reporting Act, any candidate who is subject to a credit check as part of the background investigation shall be provided with a copy of the report and the Summary of Rights form authorized by the Federal Trade Commission, which shall be provided by the credit report vendor. If the candidate is rejected as a result of information received on a credit report, the candidate shall be allowed to correct any incorrect information with the credit reporting agency, and provide a corrected report to the City. If the corrected report is submitted prior to the hiring of an alternative candidate, the City will consider the original candidate based on the corrected report.

F. Background Investigation Report and Review

The person completing the background investigation on a candidate shall prepare a written report of findings. Such report will be reviewed by the Human Resources & Risk Management Director and Department Head before a decision is made to proceed with a conditional job offer to the candidate. If a determination is made to not proceed with a conditional job offer, the candidate will be notified. The background investigation report for Police Department employees shall be maintained in a separate secure and confidential file for a period consistent with POST requirements. Background investigation reports for employees who must be cleared for access to the airport shall be maintained in a separate secure and confidential file for a period consistent with Federal Aviation Administration requirements. Background investigation reports for all other employees will be filed in the Eligibility List file (P-EL) for the recruitment, and will not become part of the employee's personnel file. Candidates do not have a right to review the background investigation report. Confidentiality of background investigation reports shall be maintained until the records are destroyed, as appropriately authorized .

G. Live Scan Checks

Candidates will be required to submit to a Live Scan check for criminal records, and will be referred from the Human Resources & Risk Management Office to the Police Department with a request for Live Scan screening for criminal records. The candidate must take the referral form attached as Exhibit 3 to the Police Department, where the Live Scan check is initiated. The candidate must return the referral form validated by the Police Department to the Human Resources & Risk Management Office prior to the candidate's start date as a City employee. The Criminal Offender Record Information ("CORI") report based on the Live Scan check is typically received seven

to ten days after being submitted. Any problem identified in that report will be addressed by Human Resources & Risk Management Office staff with the candidate.

H. Conditional Job Offer

Following completion and review of the background investigation, a conditional job offer will be made to the candidate. The offer will be conditioned on successful completion of a medical examination and, for some classifications, a psychological examination. The conditional offer may be made by the department or the Human Resources & Risk Management Office, at the discretion of the hiring department.

I. Medical and Psychological Evaluation

Following the conditional job offer every candidate will be required to successfully complete a pre-employment medical examination. Candidates for certain positions which require a commercial driver license may be required to complete a pre-employment drug test as required by Department of Transportation regulations. Certain positions, such as Police Officer and Firefighter, may be required to complete a pre-employment psychological evaluation. Notice of the requirement for a pre-employment psychological evaluation will be specified in the recruitment notice for the position. Reports from medical, drug testing, or psychological evaluation will be maintained in a confidential file.

J. Security of CORI Reports

All Human Resources & Risk Management Office staff who will have access to the CORI report must first be fingerprinted themselves, and have read and signed the Employee Acknowledgment of Legal Requirements Related to Access to Confidential Criminal Record Information ("Employee Acknowledgment") form attached as Exhibit 4. The completed Employee Acknowledgment form will be filed in the employee's Personnel File. Once the CORI report is reviewed and cleared by Human Resources & Risk Management Office staff, the CORI State Identification Number(SID) will be noted on the referral form, the referral form will be filed in the employee's confidential Personnel File and the CORI report will be destroyed. When an employee terminates, the Human Resources & Risk Management Office will notify the Department of Justice to discontinue subsequent arrest notification, using the appropriate Department of Justice form, and the CORI SID from the referral form.

The Police Department background investigation process will include a Live Scan check, and the Human Resources & Risk Management Office will not initiate an additional scan. For non-sworn, non-public safety dispatcher Police Department employees, the Police Department will return a copy of the completed CORI referral form, annotated with the CORI index number and a note that the report has been reviewed and destroyed, to the Human Resources & Risk Management Office for filing. The Human Resources & Risk Management Office will notify the Department of Justice to terminate subsequent arrest notification on interns and non-sworn and non-public safety dispatcher Police Department employees when those employees terminate. Pursuant to POST requirements, the CORI report for sworn personnel and public safety dispatchers shall be maintained in the confidential background investigation file in a manner consistent with POST requirements, and the Police Department will notify the Department of Justice to terminate subsequent arrest notification when sworn personnel and public safety dispatchers terminate.

City of Chico - Human Resources & Risk Management Office

AUTHORIZATION FOR RELEASE OF INFORMATION

I, _____ understand that in connection with the application process, the City of Chico may request information from my past employers, personal and employment references. I also understand that such investigation may include a review of criminal records by using the Live Scan check. I also understand that the City may obtain for pre-employment purposes, a copy of my credit report.

I certify that I have provided complete and truthful information to the City of Chico regarding all sources of information concerning my past employment, education, certifications, criminal conviction records, as well as any other information requested in my employment application.

I certify that I have been informed that any misrepresentations, or material omissions concerning such information will be grounds for denying my application, withdrawing any offer of employment, or immediate discharge. In order to assist the City of Chico in obtaining documents and information to confirm my background, I hereby consent to the release of information as described below:

I request, authorize and consent to the release of information to the City of Chico regarding my previous and current employment, and authorize all employers or agents that they may designate, to respond forthrightly to verbal or written inquiries regarding my employment record, including, but not limited to: positions held, dates of employment, pay rates, work performance, disciplinary records, counseling memos, or any other document deemed pertinent to the pre-employment process.

I hereby waive any and all rights and claims I may have against the City of Chico, its employees, representatives or agents, former educational or training institutions, or any person listed as a reference, from any and all liability, claims or damages that may directly or indirectly result from the use, disclosure or release of such information by any person or party, whether such information is favorable or unfavorable to me in compliance with California Civil Code Section 47 as amended.

CALIFORNIA CIVIL CODE SECTION 47 AS AMENDED, JANUARY 1, 1995, GRANTS PROTECTION FROM TORTUOUS LIABILITY TO CALIFORNIA EMPLOYERS WHO PROVIDE REFERENCES UPON REQUEST ABOUT PROSPECTIVE EMPLOYEES TO OTHER EMPLOYERS IF THE REFERENCES ARE BASED ON FACT AND NOT MALICIOUSLY INTENDED. IT ALSO GRANTS PROTECTION TO PRIVILEGED COMMUNICATIONS OF EMPLOYMENT REFERENCES WITH THE INTENT TO ENCOURAGE EMPLOYERS TO OPENLY RESPOND TO QUESTIONS FROM PROSPECTIVE EMPLOYERS CONCERNING THE JOB PERFORMANCE AND KNOWLEDGE OF THEIR EMPLOYEES.

It is with full understanding and consent that I agree that a photocopy of this authorization may be used only for the purpose stated above.

Signed: _____ Date: _____

(Print Name): _____ City Representative: _____

Social Security Number: _____ Driver License Number: _____

Approved as to form:

Lori J. Barker
By: Alicia M. Rock, Assistant City Attorney

**ACKNOWLEDGMENT OF RESPONSIBILITIES RELATED
TO CRIMINAL RECORD INFORMATION ACCESS**

As an employee of the City of Chico, you may have access to confidential criminal record information which is controlled by state and federal statutes. Misuse of such information may adversely affect the individual's civil rights and violate constitutional rights of privacy. Penal Code Section 502, prescribes the penalties relating to computer crimes. Penal Code Sections 11105 and 13300, identify who has access to criminal history information and under what circumstances it may be disseminated. Penal Code Sections 11140 - 11144 and 13301 - 13305, prescribe penalties for misuse of criminal history information. Government Code Section 6200, prescribe felony penalties for misuse of public records. Penal Code Sections 11142 and 13300 state:

“Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person not authorized by law to receive the record or information is guilty of a misdemeanor.”

Civil Code Section 1798.53, Invasion of Privacy, states:

“Any person who intentionally discloses information not otherwise public, which they know or should reasonably know was obtained from personal or confidential information maintained by a state agency or from records within a system of records maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual.”

CIVIL, CRIMINAL, AND ADMINISTRATIVE PENALTIES

- ✓ Penal Code Section 11141: DOJ furnishing to unauthorized person (misdemeanor)
- ✓ Penal Code Section 11142: Authorized person furnishing to other (misdemeanor)
- ✓ Penal Code Section 11143: Unauthorized person in possession (misdemeanor)
- ✓ California Constitution, Article I, Section 1 (Right to Privacy)
- ✓ 1798.53 Civil Code, Invasion of Privacy
- ✓ Title 18, USC, Sections 641, 1030, 1951, and 1952

Any employee who is responsible for such misuse may be subject to discipline, up to and including termination. Violations of this law may also result in criminal and/or civil action.

I HAVE READ THE ABOVE AND UNDERSTAND THE POLICY REGARDING MISUSE OF CRIMINAL RECORD INFORMATION.

Signature _____ Date _____

Printed Name _____ Title _____