

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Nicole Elliott, Director, Office of Cannabis
William Scott, Police Chief, Police Department
Vicki Hennessy, Sheriff, Sheriff's Department

FROM: *JW* Alisa Somera, Legislative Deputy Director
ADW Rules Committee

DATE: March 26, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by the City Administrator on March 20, 2018:

File No. 180233

Ordinance amending the Administrative Code to authorize the Director of the Office of Cannabis to access summary criminal history information to perform permit and licensing duties.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Ray Law, Office of Cannabis
Rowena Carr, Police Department
Asja Steeves, Police Department
Theodore Toet, Sheriff's Department
Katherine Gorwood, Sheriff's Department
Nancy Crowley, Sheriff's Department

1 [Administrative Code - Office of Cannabis, Criminal History Information Access]

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3 **Ordinance amending the Administrative Code to authorize the Director of the Office of**
4 **Cannabis to access summary criminal history information to perform permit and**
5 **licensing duties.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. Background, Findings, and Purpose.

15 (a) Police Code Article 16 comprehensively regulates commercial activities relating to
16 the cultivation, manufacture, distribution, testing, sale, and delivery of cannabis. Police Code
17 Section 1604 requires that the Director of the Office of Cannabis (“Director”) implement an
18 Equity Program to foster equitable access to participation in the cannabis industry, and to
19 provide assistance to communities unfairly burdened by the War on Drugs. As part of the
20 Equity Program, subsection (b) of Section 1604 requires the Director to offer priority
21 processing to individuals who meet certain criteria and thereby qualify as Equity Applicants.
22 The listed criteria include that (1) the individual was arrested for, convicted of, or adjudged to
23 be a ward of the juvenile court for any crime under the laws of California or any other
24 jurisdiction relating to the sale, possession, use, manufacture, or cultivation of Cannabis
25 during the period 1971-2016, or (2) the individual has a parent, sibling, or child who, during
the period 1971-2016, was arrested for, convicted of, or adjudged to be a ward of the juvenile

1 court for any crime under the laws of California or any other jurisdiction relating to the sale,
2 possession, use, manufacture, or cultivation of Cannabis. Therefore, in order to determine
3 whether individuals meet the criteria and qualify as Equity Applicants, the Director requires
4 access to criminal history information.

5 (b) Subsection (e) of Police Code Section 1615 permits the Director to deny an
6 application for a Cannabis Business Permit if the Director finds that the Applicant or Owner
7 has been convicted of an offense that is substantially related to the qualifications, functions, or
8 duties of the business or profession for which the application is made, unless the Director
9 determines that the Applicant or Owner is otherwise suitable to be issued a permit, and
10 granting the permit would not compromise public safety. To make this determination,
11 subsection (e) requires that the Director conduct a thorough review of the nature of the crime,
12 conviction, circumstances, and evidence of rehabilitation of the Applicant or Owner, and
13 evaluate the suitability of the Applicant or Owner, to be issued a permit based on the evidence
14 found through the review. Subsection (e) specifies the criminal conduct that may and may not
15 be considered as grounds for discretionary denial. To exercise the discretion vested in the
16 Director to grant or deny an application for a Cannabis Business Permit, requires that the
17 Director have access to summary criminal history information.

18 (c) Subsection (b)(11) of California Penal Code Section 11105 requires the Attorney
19 General to furnish state summary criminal history information to a city and county officer or
20 official if needed to assist that officer or official in fulfilling employment, certification, or
21 licensing duties if the access is specifically authorized by the Board to implement an
22 ordinance and that ordinance expressly refers to specific criminal conduct applicable to the
23 subject of the state summary criminal history information, and contains requirements or
24 exclusions, or both, expressly based upon that specified criminal conduct. Subsection (b)(11)
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1 further permits a county officer or official to transmit fingerprint images and related information
2 to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

3 (d) The purpose of this ordinance is to authorize the Director of the Office of Cannabis
4 to access summary criminal history information in order to fulfill the duties set forth in Police
5 Code Article 16.

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7 Section 2. Section 1638 of the Police Code, entitled "Undertaking for the General
8 Welfare," is hereby renumbered as Section 1639, and Section 1639 of the Police Code,
9 entitled "Severability," is hereby renumbered as Section 1640. No changes are made to the
10 wording of either Section. These two Sections have been renumbered solely for codification
11 purposes. Renumbering of the Sections shall not in any way change their meaning.

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13 Section 3. The Police Code is hereby amended by adding a new Section 1638, to read
14 as follows:

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16 **SEC. 1638. ACCESS TO SUMMARY CRIMINAL HISTORY INFORMATION.**

17 The Director is authorized to access summary criminal history information to implement Police
18 Code Article 16, including but not limited to Sections 1604 and 1615, to the extent permitted under
19 California Penal Code Section 11105.

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1 Section 4. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

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6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By:


9 JANA CLARK
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Office of Cannabis, Criminal History Information Access]

Ordinance amending the Administrative Code to authorize the Director of the Office of Cannabis to access summary criminal history information to perform permit and licensing duties.

Existing Law

Existing law requires that the Director of the Office of Cannabis (“Director”) implement an Equity Program to foster equitable access to participation in the cannabis industry, and to provide assistance to communities unfairly burdened by the War on Drugs. As part of the Equity Program, subsection (b) of Section 1604 requires the Director to offer priority processing to individuals who qualify as Equity Applicants. An individual with a specific criminal history may qualify as an Equity Applicant. In order to determine whether individuals meet the criteria for and qualify as Equity Applicants, the Director requires access to criminal history information. State law allows a local official to access criminal history to fulfill licensing duties if authorized by the local governing body.

Amendments to Current Law

This ordinance authorizes the Director to access criminal history to perform licensing and permitting duties.

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