

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

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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,**
5 **certification, and licensing duties and to permit employers to inquire about, require**
6 **disclosure of, or base employment decisions on, convictions for decriminalized**
7 **behavior, including the non-commercial use and cultivation of cannabis, to meet the**
8 **Cannabis Business Equity Incubator Program requirements.**

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

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

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16 Section 1. Background, Findings, and Purpose.

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

1 jurisdiction relating to the sale, possession, use, manufacture, or cultivation of Cannabis
2 during the period 1971-2016, or (2) the individual has a parent, sibling, or child who, during
3 the period 1971-2016, was arrested for, convicted of, or adjudged to be a ward of the juvenile
4 court for any crime under the laws of California or any other jurisdiction relating to the sale,
5 possession, use, manufacture, or cultivation of Cannabis. Therefore, in order to determine
6 whether individuals meet the criteria and qualify as Equity Applicants, the Director requires
7 access to criminal history information.

8 (b) Police Code Section 1604 also requires that the Equity Program offer priority
9 permit processing to Equity Incubators. An Equity Incubator is an Applicant that does not
10 qualify as an Equity Applicant, but that submits with its Cannabis Business Permit application
11 a Cannabis Equity Incubator Agreement in which it commits to ensure that at least 50% of the
12 Equity Incubator’s employees satisfy the requirements of Section 1604(b)(4). Therefore, in
13 order to determine whether employees meet the Equity Applicant criteria, Equity Incubators
14 must inquire about, require disclosure of, or base employment decisions on, convictions for
15 decriminalized behavior, including the non-commercial use and cultivation of cannabis.

16 (c) Subsection (e) of Police Code Section 1615 permits the Director to deny an
17 application for a Cannabis Business Permit if the Director finds that the Applicant or Owner
18 has been convicted of an offense that is substantially related to the qualifications, functions, or
19 duties of the business or profession for which the application is made, unless the Director
20 determines that the Applicant or Owner is otherwise suitable to be issued a permit, and
21 granting the permit would not compromise public safety. To make this determination,
22 subsection (e) requires that the Director conduct a thorough review of the nature of the crime,
23 conviction, circumstances, and evidence of rehabilitation of the Applicant or Owner, and
24 evaluate the suitability of the Applicant or Owner, to be issued a permit based on the evidence
25 found through the review. Subsection (e) specifies the criminal conduct that may and may not

1 be considered as grounds for discretionary denial. To exercise the discretion vested in the
2 Director to grant or deny an application for a Cannabis Business Permit, requires that the
3 Director have access to summary criminal history information.

4 ~~(ed)~~ ~~Subsection (b)(11) of California Penal Code Section 11105~~ California Penal Code
5 Sections 11105(b)(11) and 13300(b)(11) requires the Attorney General to furnish local, state,
6 and federal level summary criminal history information to a city and county officer or official if
7 needed to assist that officer or official in fulfilling employment, certification, or licensing duties
8 provided that the local ordinance governing those duties includes~~if the access is specifically~~
9 ~~authorized by the Board to implement an ordinance and that ordinance expressly refers to~~
10 ~~specific criminal conduct applicable to the subject of the state summary criminal history~~
11 ~~information, and contains requirements or exclusions, or both, expressly based upon that~~
12 ~~specified criminal conduct. Subsection (b)(11) further permits a county officer or official to~~
13 ~~transmit fingerprint images and related information to the Department of Justice to be~~
14 ~~transmitted to the Federal Bureau of Investigation.~~ a requirement or exclusion from
15 employment, licensing, or certification based on specific criminal conduct on the part of the
16 subject of the record and the governing body of the city and county specifically authorizes
17 access to summary criminal history information for employment, licensing, or certification
18 purposes.

19 ~~(de)~~ The purposes is~~are~~ to authorize the Director of the Office of
20 Cannabis to access summary criminal history information in order to fulfill the duties set forth
21 in Police Code Article 16 and to permit employers to inquire about convictions for
22 decriminalized behavior, including the non-commercial use and cultivation of cannabis, when
23 necessary to satisfy the requirements of the Police Code Section 1604 Equity Program.

1 Section 2. Section 1638 of the Police Code, entitled “Undertaking for the General
2 Welfare,” is hereby renumbered as Section 163940, and Section 1639 of the Police Code,
3 entitled “Severability,” is hereby renumbered as Section 164041. No changes are made to the
4 wording of either Section. These two Sections have been renumbered solely for codification
5 purposes. Renumbering of the Sections shall not in any way change their meaning.
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7 Section 3. The Police Code is hereby amended by adding a new Sections 1638 and
8 1639, to read as follows:
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10 **SEC. 1638. ACCESS TO SUMMARY CRIMINAL HISTORY INFORMATION.**

11 The Director is authorized to access local, state, and federal level summary criminal history
12 information for licensing, permitting, and certification of commercial cannabis operations,
13 including but not limited to the cultivation, manufacture, distribution, testing, sale, and delivery
14 of cannabis, and may not disseminate the information to a private entity to implement Police
15 Code Article 16, including but not limited to Sections 1604 and 1615, to the extent permitted
16 under California Penal Code Section 11105.

17 **SEC. 1639. EQUITY INCUBATOR EMPLOYERS’ CRIMINAL HISTORY INQUIRY.**

18 Notwithstanding Police Code Article 49 or any other provision of City law, employers
19 applying as Equity Incubators may inquire about, require disclosure of, or base employment
20 decisions on, convictions for decriminalized behavior, including the non-commercial use and
21 cultivation of cannabis, to determine whether employees satisfy the Equity Applicant criteria
22 set forth in Section 1604(b)(4).
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24 Section 4. Effective Date. This ordinance shall become effective 30 days after
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

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4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 JANA CLARK
8 Deputy City Attorney

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