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Robert C. Haas
Police Commissioner

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City Manager

To: Richard C. Rossi, City Manager

From: Robert C. Haas, Police Commissioner

Date: Tuesday, July 21, 2014

Ref.: Proposed Ordinance: **Chapter 5.50 – Civilian Fingerprinting and Criminal History Records Checks for Certain Licenses**

Dear Sir:

Attached, please find a proposed ordinance, as authorized by Chapter 256 of the Acts of 2010, and incorporated into the Massachusetts General Laws as Chapter 6, Section 172 B 1/2, to enable the Cambridge Police Department to conduct State and Federal Fingerprint Based Criminal History checks for individuals applying for certain enumerated licenses.

As the Council is aware, the City, through its various licensing authorities, processes a significant number of applications for licensure covering a broad spectrum of services, including, but not limited to, inn-keeping, public conveyance, peddling, alcoholic beverages and tour guides. Given the frequency and type of interactions that these licensees have with the citizens of Cambridge and the general public, it is essential that the City conduct a thorough background check of potential licensees to ensure the public's safety. The attached proposed ordinance will provide the Police Department with all of the necessary tools to prepare a fair and accurate "Fitness Determination" to assist the various licensing authorities in effectively processing applications for licensure covered by the ordinance.

The attached proposed ordinance encompasses a wide range of licenses, all of which involve significant interaction between the licensees and the public. Currently, only a select number of potential licensees undergo any type of fitness determination prior to receiving a particular license. By expanding the scope of the regulatory licensing scheme, the City will ensure that it has the most comprehensive review of the suitability of potential licensees who are seeking to conduct business with the citizens of Cambridge and the general public. At the same time, by using a fingerprint based system, the City will also ensure that it is utilizing a fair, accurate and

comprehensive system. First, a fingerprint based system will help ensure that the criminal history records generated by a records check are accurate and truly belong to the potential licensee. To the extent that any discrepancies remain, under the proposed ordinance, the applicant will still have the opportunity to seek to correct, modify or supplement the "Criminal History Record" prior to the Police Department rendering a "Fitness Determination" to the appropriate "Licensing Authority." Second, a fingerprint based system will also allow for a more comprehensive "Criminal History Check" given that the requisite fingerprint card or scan can be utilized to quickly and efficiently conduct both state and national criminal history records checks, thereby providing additional information as to the suitability of the applicant.

By enacting this ordinance, the City would be taking a major step towards ensuring the safety of its citizens and those members of the public conducting business within the City.

Should you have any questions or concerns, please let me know.

Respectfully submitted,

Robert C. Haas
Police Commissioner

Be it ordained by the City Council of Cambridge, as follows:

A new Chapter 5.50 shall be added to Article 5 of the Cambridge Municipal Code entitled Business Licenses and Regulations that provides the following:

Chapter 5.50 – Civilian Fingerprinting and Criminal History Records Checks for Certain Licenses

Sections:

5.50.010	**Purpose**
5.50.020	**Definitions**
5.50.030	**Applicability**
5.50.040	**Required Notification to Applicants**
5.50.050	**Administration**
5.50.060	**Fees**
5.50.070	**Declaration of Authorization**
5.50.080	**Severability & Effective Date**

Section 5.50.010 *Purpose*

Pursuant to the authority granted in the Massachusetts General Laws, Chapter 6, Section 172B½, the City of Cambridge (the "City") hereby establishes a civilian fingerprinting system for the purpose of conducting state and national criminal history records checks of individuals applying for certain licensures, as set forth in Section 5.50.030.

Section 5.50.020 *Definitions*

A. "Licensing Authority" shall mean the City department, commission, board or agency that issues one of the licenses set forth in Section 5.50.030.

B. "Applicant" shall mean any individual who submits or is required to submit an application for a license listed in Section 5.50.030.

C. "License" shall mean any license or permit listed in Section 5.50.030.

D. "Criminal History Check" shall mean a state and/or national criminal history records check of an Applicant by the City's Police Department, the Identification Section of the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems ("DCJIS"), and/or the Federal Bureau of Investigation ("FBI").

E. "Criminal History Records" shall mean state and/or criminal history records obtained by or during a Criminal History Check.

F. "Fitness Determination" shall mean a report prepared by the City's Police Department as to an Applicant's fitness for a particular license based on the results of any Criminal History Check authorized by this Chapter 5.5.0.

Section 5.50.030 *Applicability*

An Applicant applying for a License for the following activities is required to submit with the application for such License a full set of fingerprints taken by the City's Police Department within six (6) months prior to the date of application of said License—

A. Peddlers License,

B. Managers of Alcoholic Beverages License,

C. Inn holders License

D. Entertainment License

E. Public Conveyance Owner and Operator

F. Jitney Owner and Operator

G. Pedicab Owner and Operator

H. Livery Owner and Operator

I. Ice Cream Truck Vendors

J. Dealer of Second-hand Articles

K. Used Car Dealers

L. Pawn Dealers

M. Palm Readers

N. Tour Guides

Section 5.50.040 *Required Notification to Applicants*

A. At the time of fingerprinting, the City's Police Department shall notify the Applicant of the following—

1. The Applicant's fingerprints shall only be used in connection with the Applicant's Criminal History Check;

2. The Applicant may request and receive a copy of the Applicant's Criminal History Records; and,

3. The Applicant may seek to correct, modify or appropriately supplement information contained in the Criminal History Check that the Applicant believes to be inaccurate or incomplete pursuant to 28 CFR 16.34 and M.G.L. c. 6, § 175.

Section 5.50.050 *Administration*

A. Upon receipt of the Applicant's fingerprints and the appropriate fee, the City's Police Department shall transmit the fingerprints to the Identification Section of the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems ("DCJIS"), and/or the Federal Bureau of Investigation ("FBI") solely for the purpose of conducting a Criminal History Check of the Applicant.

B. After the Applicant has had an opportunity to seek to correct, modify or supplement the Criminal History Record, the City's Police Department shall then render a Fitness Determination to the appropriate Licensing Authority. The Fitness Determination shall indicate whether the Applicant has been convicted of or under pending indictment for any crime 1) involving the use force or threat of force, 2) involving controlled substances, 3) that was a sex-related offense, or 4) which bears upon the Applicant's fitness to engage in the licensed activity, including, but not limited to acts of fraud or other financial crime. The City's Police Department shall only transmit the Fitness Determination to the relevant Licensing Authority.

C. A Licensing Authority may utilize the results of the Fitness Determination to evaluate the suitability of the Applicant for a particular License that the Applicant has applied for. A Licensing Authority may deny an application for a License based on the Fitness Determination if it renders the Applicant unsuitable for the proposed licensed activity.

D. The Criminal History Records and the Fitness Determination may only be disseminated to the Applicant and to authorized law enforcement officials.

E. The License Commission is authorized to promulgate regulations for the implementation of this Chapter.

Section 5.50.060 *Fees*

A. The fee charged by the Police Department for the Criminal History Check shall be one hundred dollars ($100).

B. A portion of the fee, as specified in Massachusetts General Laws Chapter 6, Section 172B 1/2, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the City.

Section 5.50.070 *Declaration of Authorization*

The City authorizes the Massachusetts State Police, the DCJIS and the FBI to conduct Criminal History Checks consistent with this Chapter 5.50.

Section 5.50.080 *Severability & Effective Date*

If any provision of these sections shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall not affect the validity of any remaining section or sections. The provisions of these sections shall be effective 90 days after passage.

Filed in Council: July 28, 2014