

City of Carson City
Agenda Report

item #10

Date Submitted: June 23, 2008

Agenda Dates Requested: July 3, 2008

Time Requested: 10 minutes

To: Mayor and Supervisors

From: D.A.

Subject Title: Action to introduce on first reading, Bill No. _____, "An Ordinance Amending Carson City Municipal Code Title 4 Licenses and Business Regulations, Adding Chapter 4.03 National Background Checks, Section 4.03.010 National Fingerprint-Background Check for Business License Applicants to Require Certain Applicants to Submit to a National Fingerprint-Background Check with the Federal Bureau of Investigation and other Matters Properly Related Thereto."

Staff Summary: The Federal Bureau of Investigation ("FBI") has informed Carson City that, after August 29, 2008, the FBI will no longer accept fingerprint cards submitted for national, criminal-background checks for business license applicants unless there is an underlying local ordinance authorizing the practice. Nevada Revised Statute ("NRS") 239B.010 (1) (a) authorizes political subdivisions of the state to request of and receive from the FBI information on the background and personal history of persons seeking licenses. However, the FBI requires a more specific authorization that allows the fingerprint-background-check practice at the *ordinance level*. In particular, the FBI requires that such an ordinance express: (1) the specific business, profession, or occupation to which an application for a license applies, for which applicants must be fingerprinted; (2) specific authorization for the submission of the fingerprints for a national, criminal-background check; and (3) a reference to the authorizing state statute, NRS 239B.010 (1) (a). The proposed ordinance fulfills the requirements set forth by the FBI, so that Carson City may continue to submit fingerprint cards to the FBI for a national, criminal-background check of certain business-license applicants. In particular, the business license applicants affected by the ordinance are: (1) applicants seeking an alcoholic beverage license; (2) applicants seeking a pawnbroker's license, pawnshop license, second-hand dealer's license, or an antique dealer's license; and (3) applicants seeking a solicitor's license.

Type of Action Requested: (check one)

☐ Resolution

☒ Ordinance (1st Reading)

☐ Formal Action/Motion

☐ Other (Specify)

Does this action require a Business Impact Statement: () Yes (xx) No

Recommended Board Action: I move to introduce on first reading, Bill No. _____,
"An Ordinance Amending Carson City Municipal Code Title 4 Licenses
and Business Regulations, Adding Chapter 4.03 National Background
Checks, Section 4.03.010 National Fingerprint-Background Check for
Business License Applicants to Require Certain Applicants to Submit to a
National Fingerprint-Background Check with the Federal Bureau of
Investigation and other Matters Properly Related Thereto."

Explanation for Recommended Board Action: This ordinance will allow Carson City to
continue to submit fingerprint cards to the
FBI for a national, criminal-background
check of certain business license applicants.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 239B.010 (1) (a)

Fiscal Impact: n/a

Explanation of Impact: n/a

Funding Source: n/a

Alternatives: n/a

Supporting Material: (1) Draft (Version 4, dated 6/19/08) Amended Carson City Municipal
Code, Title 4 Administration And Personnel, Chapter 4.03 National Background Checks, Section
4.03.010 National Fingerprint-Background Check For Certain Business License Applicants; (2)
Open Letter to Nevada Municipal Agencies From Captain Philip K. O'Neill, Division Chief of
the Nevada Department of Public Safety, dated November 20, 2007, explaining the need for
Nevada Municipalities to promulgate ordinances authorizing FBI criminal-background,
fingerprint checks.

Prepared By: William Geddes Date: 6/24/08
William Geddes, Deputy D.A.

Reviewed By: William Geddes Date: 6/24/08
William Geddes, Deputy D.A.

: Larry Werner Date: 6/24/08
Larry Werner, City Manager

: William Geddes Date: 6/24/08
(District Attorney)

: Mike Brown Date: 6/24/08
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay

2) _____

(Vote Recorded By)

ORDINANCE NO. _____

BILL NO. _____

AN ORDINANCE AMENDING CARSON CITY MUNICIPAL CODE
TITLE 4 LICENSES AND BUSINESS REGULATIONS, ADDING
CHAPTER 4.03 NATIONAL BACKGROUND CHECKS, SECTION
4.03.010 NATIONAL FINGERPRINT-BACKGROUND CHECK FOR
BUSINESS LICENSE APPLICANTS TO REQUIRE CERTAIN
APPLICANTS TO SUBMIT TO A NATIONAL FINGERPRINT-
BACKGROUND CHECK WITH THE FEDERAL BUREAU OF
INVESTIGATION AND OTHER MATTERS PROPERLY RELATED
THERETO.

THE BOARD OF SUPERVISORS OF CARSON CITY DOES ORDAIN:

SECTION I:

That Title 4 of the Carson City Municipal Code is hereby amended as follows:

Title 4 LICENSES AND BUSINESS REGULATIONS

Chapter 4.03 NATIONAL BACKGROUND CHECKS

Chapter 4.04 BUSINESS LICENSES

Chapter 4.05 SURCHARGE FOR ENHANCEMENT OR IMPROVEMENT OF
TELEPHONE SYSTEM USED FOR REPORTING EMERGENCIES

Chapter 4.08 ROOM RENTAL TAX

Chapter 4.13 LIQUOR BOARD AND LIQUOR LICENSING AND SALES

Chapter 4.14 GAMING LICENSES AND REGULATIONS

Chapter 4.16 SOLICITORS AND CANVASSERS

Chapter 4.25 TRANSIENT FACILITY CHILD-TENDING AGENCIES

Chapter 4.27 BICYCLES*

Chapter 4.28 ASSEMBLIES

Chapter 4.29 MASSAGE ESTABLISHMENTS*

Chapter 4.30 INVASIVE BODY DECORATION ESTABLISHMENTS

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1 SECTION II:

2 That Chapter 4.03 of the Carson City Municipal Code is hereby added as follows:

3 Chapter 4.03 NATIONAL BACKGROUND CHECKS

4 4.03.010 National Fingerprint-Background Check for Certain License Applicants

5 SECTION III:

6 That Section 4.03.010 of the Carson City Municipal Code is hereby added as
7 follows:

8 4.03.010 National Fingerprint-Background Check For Certain License Applicants.

9 1. Before obtaining a business license with the City of Carson City, every license
10 applicant who seeks a business license for a business, profession, or occupation specified in
11 Subsection 2 shall submit to a national background check. Carson City and its authorized
12 agents, including the Central Repository for Nevada Records of Criminal History
13 ("CRNRCH"), are authorized to submit to the Federal Bureau of Investigation ("FBI") the
14 license applicant's fingerprints, and Carson City and its authorized agents, including the
15 CRNRCH, are further authorized to submit and receive from the FBI information on the
16 national background check, including any criminal background and personal history of the
17 license applicant. [Reference NRS 239B.010 (1) (a).]

18 2. License applicants for the following business, professions, occupations, or
19 business activities are subject to the employment-background check specified in Subsection

20 1:

21 a. Applicants seeking an alcoholic beverage license;

22 b. Applicants seeking a pawnbroker's license, pawnshop license, second-
23 hand dealer's license, or an antique dealer's license; and

24 c. Applicants seeking a solicitor's license.

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1 SECTION IV:

2 That no other provisions of Chapter 4.03 are affected by this ordinance.

3
4 PROPOSED this _____ day of _____, 2008.

5 PROPOSED by Supervisor _____.

6 PASSED on the _____ day of _____, 2008.

7 VOTE:

AYES:

8 _____
9 _____
10 _____
11 _____
12 _____

13 NAYES:

14 _____
15 _____

16 ABSENT:

17 _____
18 _____

19 ATTEST:

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21
22 ALAN GLOVER, Clerk/Recorder

MARV TEIXEIRA, Mayor

23
24 This ordinance shall be in force and effect from and after the _____ day of the month of
25 _____ of the year 2008.

Jim Gibbons
Governor



Phillip A. Galeoto
Director

Captain Philip K. O'Neill
Division Chief

Records and Technology Division
333 West Nye Lane, Suite 100
Carson City, Nevada 89706
Telephone (775) 684-6262 – Fax (775) 684-6265
www.nvrepository.state.nv.us

November 20, 2007

First Name/Last Name, Title
Address
City, State ZIP

RE: Fingerprint-based Background Checks

Dear NAME:

The Nevada Department of Public Safety (DPS), Records Bureau has recently been informed by the Federal Bureau of Investigation (FBI) that effective **August 29, 2008** it will no longer accept fingerprint cards from your agency/local sheriff's office for national criminal background checks for employment and licensing purposes unless there is an underlying local statute or ordinance that has been reviewed and approved by the FBI for those purposes.

To give you some background on this issue, many local governments are using Nevada Revised Statutes (NRS) 239B.010 as their justification for national fingerprint-based background checks for employment and licensing purposes for everything from adult entertainment to work cards. The FBI notified the DPS Records Bureau in 2003 that local use of NRS 239B.010 was not allowed because the FBI had neither received nor approved local statutes/ordinances authorizing fingerprint-based background checks for such purposes. However, prior management within the Records Bureau took no action at that time.

In June 2007, the FBI again contacted the DPS Records Bureau and informed us that local use of NRS 239B.010 must be stopped *at once* unless it could be shown that the local statutes/ordinances specifically met the FBI's criteria allowing fingerprint-based background checks for employment/licensing purposes. The Records Bureau immediately started researching the issue, and in August 2007 presented the FBI's Access Integrity Unit with local statutes/ordinances we felt met the FBI's criteria. However, after review, the FBI determined in September 2007 that none of the local statutes/ordinances was acceptable. Therefore, the FBI would start rejecting all local government NRS 239B.010 fingerprint cards.

The DPS Records Bureau pleaded with the FBI not to cut our local governments off and instead give us time to work with the local governments to address the problem. We recognize the Records Bureau should have brought this issue to your attention years ago; however, we have

undergone several changes in management since 2003, and current management was not aware of this issue until the FBI contacted us over the summer. Shortly thereafter, I disseminated some preliminary information to the Sheriffs' and Chiefs' Association at their September meeting and told them that we would be sending a letter with additional information.

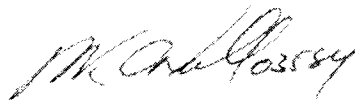
In order to conduct national fingerprint-based background checks for local employment/licensing purposes, your local government's statutes/ordinances must be revised to include the following components:

- Must include a requirement for applicants for a specific occupation or license to be fingerprinted;
- Must include authorization for submission of the fingerprints to the FBI for a national background check; and
- Must reference the authorizing state statute, NRS 239B.010(a).

For example, Elko City Code 5-11-4 requires applicants for a bar license to be fingerprinted. However, the Code fails to authorize submission to the FBI for a national background check and fails to reference the state authorizing statute NRS 239B.010(a). If the City of Elko wanted to require a national fingerprint-based background check for bar employees, it would have to amend City Code 5-11-4 to include those missing components. Absent all three components, the FBI will reject the fingerprint submissions effective August 29, 2008.

The DPS Records Bureau is committed to helping our local governments to address this issue and comply with the FBI's requirements within the deadline. Please submit your revised statute/ordinance to Mindy McKay, Program Officer, at the address above as soon as possible so that we may forward your revision to the FBI for review and approval. Please contact Ms. McKay at (775) 684-6205 or Julie Butler, Interim Records Bureau Manager, at (775) 684-6201 if you have any questions regarding this letter or about this issue. Thank you in advance for your attention to this important matter.

Sincerely,



Captain Philip K. O'Neill
Division Chief

PKO/jb

cc: Local Sheriffs and Chiefs
Agency TACs and ATACs
Nevada Association of Counties
Nevada League of Cities
Phil Galeoto, Director
John Douglas, Deputy Director
Kathalie Koche, Deputy Chief of Staff

A. Name
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Julie Butler, Interim Records Bureau Manager
Mindy McKay, Program Officer
Records Bureau Administrative Officers