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MEMORANDUM

To: Mayor and City Council

From: Kristin Adkins, Records Supervisor

Date: February 26, 2018

Subject: Ordinance Amendment to Adopt Fingerprint-Based Background Check Process

DESCRIPTION

An ordinance amendment that allows for the description of the fingerprint-based background check process in reference to licensing for Alcohol License holders, by allowing for the addition of verbiage required by the Georgia Bureau of Investigation (GBI).

BACKGROUND

Law enforcement agencies must discontinue the use of the law enforcement agency's Originating Agency Identifier (ORI) when submitting applicant fingerprints on behalf of non-criminal justice governmental agencies for employment or licensing purposes under a FBI-approved state or federal statute. All authorized non-criminal justice governmental agencies must have a FBI assigned ORI to submit requests for FBI fingerprint-based background checks. The ORI identifies the approved requesting agency and the authority in which the agency is authorized to receive state and federal criminal history record information (CHRI). The city attorney has prepared an ordinance as required by the Georgia Bureau of Investigation (GBI) and pursuant to Public Law (Pub. L.) 92-544 that describes the fingerprint-based background check process and the use of the non-criminal justice governmental agency ORI.

RECOMMENDATION

Staff recommends that City Council adopt the ordinance amendment that describes the fingerprint-based background check process and the use of the non-criminal justice governmental agency ORI, by allowing for the addition of verbiage required by the Georgia Bureau of Investigation (GBI).

Denis Shortal Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Riticher City Council Post 2
Tom Lambert City Council Post 3

Terry Nall City Council Post 4
Lynn Deutsch City Council Post 5
John Heneghan City Council Post 6

**AN ORDINANCE TO REVISE PROCESS FOR OBTAINING FINGERPRINT-
BASED BACKGROUND CHECK**

WHEREAS, Federal Public Law 92-544 provides for national fingerprint-based criminal history record checks for licensing purposes by governmental entities; and

WHEREAS, O.C.G.A. §35-3-35(a)(1) provides that local governmental authorities may require, by ordinance, the fingerprinting of applicants or licensees for state and national criminal history record information of said applicants or licensees; and

WHEREAS, the City of Dunwoody is charged with preserving the health, safety and welfare of the citizens of the City; and

WHEREAS, the City of Dunwoody Police Department currently conducts background checks for the City of Dunwoody for various licensing applications; and

WHEREAS, the Georgia Bureau of Investigation (GBI) is requiring the City to get its own ORI access number for licensing background checks and, as a result, requires the City to adopt the process by which these fingerprint-based background checks will be conducted; and

WHEREAS, the Mayor and City Council desire to continue to receive background checks on applicants for certain licensing, including alcohol, massage, pawn shop, and others that the City Code currently authorizes for a background check prior to approval.

NOW, THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DUNWOODY, GEORGIA hereby Ordain as follows:

Section 1: That Chapter 2 (“Administration”), Article III (“City Departments”) of the Dunwoody Code is hereby revised by adding new Section 2-62, “State and National Criminal Background Checks” to read as follows:

Sec. 2-62. State and National Criminal Background Checks.

- (a) Wherever in this Code a requirement for obtaining and license or a permit from the City requires a fingerprint-based background check, the process of acquiring and utilizing same shall be in accordance with this Section and all applicable Georgia Bureau of Investigation (“GBI”) requirements in addition thereto.

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- (b) An applicant for any license or permit that is required under a provision of this Code to undergo a "fingerprint-based background check," shall submit two sets of his or her fingerprints taken by any law enforcement agency in the United States to the City Manager or designee, along with appropriate fees for the fingerprint-based background check.
- (c) Upon receipt of the fingerprints and the appropriate fees, the City Manager or designee will transmit both sets of fingerprints and the appropriate fees to the Dunwoody Police Department, who will then submit them to the Georgia Bureau of Investigation, who will conduct a State-wide background check. The GBI will then transfer the same to the Federal Bureau of Investigation ("FBI") for a comparison with nationwide records. The results of the FBI check will be returned to the GBI, which will return the full search results to the City of Dunwoody Police Department. The Dunwoody Police Department shall then transmit to the City Manager or designee any potentially disqualifying results received from the GBI by writing same on the background check consent form. The Dunwoody Police Department shall retain until the conclusion of the licensing year for the license or permit applied for a copy of the fingerprint cards, results received from the GBI and the background check consent form.
- (d) In rendering a fitness determination for approval or denial of a license or permit, the City Manager or designee will determine, based on the results received from the GBI, whether the record subject has been convicted, plead guilty or nolo contendere, to the disqualifiers as stated in the applicable section of this Code governing the specific licensing or permitting process. The City shall keep a copy of the application and background check consent form as required by the City's document retention schedule.
- (e) A record subject may request and receive a copy of his/her criminal history record information from the Dunwoody Police Department. Should the record subject seek to amend or correct his/her record, he/she must contact the GBI for a State of Georgia record or the FBI for records from other jurisdictions maintained in its file.

Section 2: That Chapter 4 ("Alcoholic Beverages"), Article II ("Licensing"), Section 4-24 ("Retail Package Licenses"), subsection (b), of the City of Dunwoody Code is hereby revised as follows:

Sec. 4-24. Retail Package Licenses.

- (b) Upon filing an application and payment of a filing fee and a license fee and after a fingerprint-based background check in accordance with Section 2-62 of this Code and review by the finance department, a license may be issued to a licensed retail package wine or malt

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beverage dealer or licensed wine or malt beverage wholesaler to hold a wine or malt beverage tasting, respectively. The license shall allow the applicant to provide samples of wine and/or malt beverage to the public for consumption at a location which meets legal requirements for on-premises consumption, with the exception of a full-service kitchen requirement, under the following conditions:

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. . . .
. . . .

- (4) Should a single applicant apply for both a wine and malt beverage tasting license in the same calendar year, the applicant shall be subject to and have to pay for only one fingerprint-based background check. However, the applicant would be responsible for paying the filing fee for each application.

Section 3: That Chapter 4 is hereby further amended by revising Article II, Section 4-31 (“Application”), subsections (f) and (h), as follows:

Sec. 4-31. Application.

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. . . .
. . . .

- (f) Each applicant and licensee shall submit to a fingerprint-based background check in accordance with Section 2-62 of this Code.

. . . .

- (h) In addition to the fingerprint-based background check, each applicant and licensee authorizes the city and its agents to secure from any legal source and by any legal means his/her civil history and to use such information in determining whether the license applied for shall be issued. Each applicant further authorizes the city and its agents to use such information in any public hearing with respect to the license applied for, either before or after the issuance of the license. Each applicant waives any right that he would otherwise have to preclude the city or its agents from obtaining and using such information, and each applicant further waives any liability of the city or its agents for obtaining and using such information.

Section 4: That Chapter 4 is hereby further amended by revising Article II, Section 4-35 (“Procedure for Consideration of Application; temporary licenses”), as follows:

Sec. 4-35. Procedure for Consideration of Application; temporary

licenses

- (a) The city manager or designee shall have the responsibility and authority to request additional information as may be determined to be necessary in order for the city manager or designee to accept the application as complete prior to its approval or denial pursuant to [section 4-36](#).

Section 5: That Chapter 4 is hereby further amended by revising Article VI (“Employment Restrictions and Handling Requirements”), Section 4-164 (“Pouring Permit Required”), as follows:

Sec. 4-164. Pouring Permit Required.

. . . .

- (b) Any person required to obtain a pouring permit shall apply to the city for such permit. Only one pouring permit per individual will be issued for employment at any and all establishments within the city. The permit shall contain a picture of the permit holder, the name of the establishment the permit is issued for, will be valid for a period of one year and shall be renewed on or before its expiration. Persons applying for the permit shall submit themselves to a fingerprint-based background check in accordance with Section 2-62 of this Code. The fee for a pouring permit shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council.
- (c) The City Manager or designee may revoke an employee's pouring permit and demand its return where the employee violates the provisions of this chapter.

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- (g) A new fingerprint-based background check may be conducted upon each renewal application for a pouring permit.
- (h) When any employee's pouring permit is denied or revoked, the City Manager shall provide written notice of the denial or revocation to the applicant or employee, which shall set forth the reasons for the denial. The applicant shall have a right of review of the denial by filing an appeal with the alcohol license review board within 30 days of the denial, pursuant to the procedures established in this chapter.

Section 5: That Chapter 10 (“Business and Occupation Taxes, Licenses and Regulations”) is hereby amended by revising Article II (“Secondhand Dealers; Dealers in Precious Metals and Gems and Pawnbrokers”), Section 10-56 (“Application for permit”) to read as follows:

Sec. 10-56. Application for Permit.

. . . .

. . . .

- (d) The applicant shall submit to a fingerprint-based background check in accordance with the provisions of Section 2-62 of this Code.
- (e) Upon completion of the review of the application by the city, no more than 45 days after filing of a completed application, the permit shall be granted by the city manager or designee if the application conforms to all the requirements of this article. If the application does not conform to all the requirements of this article, the city manager or designee shall deny said application by sending a written denial to the applicant(s) by certified mail, return receipt requested, stating the reasons for same and informing the applicant(s) of their right to appeal said denial within 30 days of the denial letter pursuant to the terms of this article.

Section 6: That Chapter 10 is hereby further amended by revising Article III (“Door-to-Door Salesmen”), Section 10-90 (“Permit Applications”) to read as follows:

Sec. 10-90. Permit Applications.

. . . .

. . . .

- (c) The applicant shall submit to fingerprint-based background check in connection with the application for the permit, pursuant to the requirements of Section 2-62 of this Code.

Section 7: That Chapter 10 is hereby further amended revising Article VII (“Escort Services”), Section 10-202 (“Information Concerning Employees to be filed with City Manager; Background Investigation Required”) to read as follows:

Sec. 10-202. Information Concerning Employees to be filed with City Manager; Fingerprint-based Background Check Required.

. . . .

- (b) All employees of the licensee must submit to a fingerprint-based background check, pursuant to Section 2-62 of this Code, not less than 15 days prior to commencing work to allow for the investigation of the employee.

Section 8: That Chapter 10, Article VII is hereby further amended by revising Section 10-204 (“License Required; Application; Information to be Given”) to read

as follows:

Sec. 10-204. License Required; Application; Information to be Given

(a)

. . . .

(2) The applicant and employees must submit to a fingerprint-based background check in accordance with Section 2-62 of this Code.

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. . . .

Section 8: That Chapter 10 is further amended by revising Article VIII (“Sexually Oriented Businesses”), Section 10-232 (“License Required”) to read as follows:

Sec. 10-232. License Required.

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. . . .

(b) *Application.*

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(9) The Applicant shall submit him/herself to a fingerprint-based background check pursuant to the provisions of Section 2-62 of this Code.

Section 9: That Chapter 10 is further amended by revising Article IX (“Massage Establishment and Spas”), Section 10-269 (“License Required; Application”) to read as follows:

Sec. 10-269. License Required; Application.

(a)

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- (7) The applicant shall submit him/herself to a fingerprint-based background check in accordance with Section 2-62 of this Code.

Section 10: That Chapter 10, Article IX is further amended by revising Section 10-271 (“Work Permits Required”) to read as follows:

Sec. 10-271. Work Permits Required.

. . . .

. . . .

- (c) Any person required to obtain a work permit shall apply to the city manager or designee for such permit. A separate work permit per individual is required for employment at each establishment within the city. The permit will be valid for a period of one year from the date in which the application is received by the city and shall be renewed on or before its expiration. Persons applying for the permit shall make themselves available for fingerprint-based background checks pursuant to Section 2-62 of this Code. The nonrefundable fee for a work permit shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council. Replacement of lost permit(s) shall be issued upon payment of one-half of the fee(s) charged for work permits.

. . . .

- (h) A new fingerprint-based background check shall be conducted for each application, irrespective of whether it’s for a new permit or a renewal.

Section 11: This Ordinance shall be effective immediately upon its adoption and its provisions appropriately incorporated into the Code of the City of Dunwoody, Georgia. This Ordinance repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this 12th day of March, 2018.

Approved:

Denis L. Shortal, Mayor
Approved as to Form:

Attest:

#5.

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Sharon Lowery, City Clerk

City Attorney

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