

ORDINANCE NUMBER 2023 - _____

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA AMENDING SECTIONS 2-195 AND 2-196, *CODE OF ORDINANCES, CITY OF OCALA, FLORIDA*; PROVIDING FOR THE ADMINISTRATION OF PREEMPLOYMENT FINGERPRINTING AND BACKGROUND CHECKS; PROVIDING DIRECTION TO STAFF; PROVIDING DIRECTION TO THE CODIFIER; REPEALING INCONSISTENT AND/OR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY OF ORDINANCE PROVISIONS; PROVIDING FOR MODIFICATIONS ARISING FROM CONSIDERATION AT A PUBLIC HEARING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Ocala, Florida, as provided in Article VIII, Section 2(b), of the *Constitution of the State of Florida*, and Section 166.021(1), *Florida Statutes*, enjoys all governmental, corporate and proprietary powers necessary to conduct municipal government, perform municipal functions and render municipal services and may exercise any power for municipal purposes; except as expressly prohibited by law; and

WHEREAS, the City of Ocala, Florida, as provided in Section 166.021(3), *Florida Statutes*, may enact legislation concerning any subject matter upon which the state legislature may act; except when expressly prohibited by law; and

WHEREAS, the City of Ocala, Florida, pursuant to the aforementioned grants of authority and further pursuant to other provisions of Florida and federal law, may administer preemployment fingerprinting and background checks; and

WHEREAS, on or about April 20, 2022, the City Council adopted Ordinance 2022-33 which created Sections 2-195 and 2-196, of the *Code of Ordinances, City of Ocala, Florida*; and

WHEREAS, said Ordinance 2022-33 provided for the effective administration of preemployment fingerprinting and background checks for employees of the City of Ocala, Florida; and

WHEREAS, following adoption of Ordinance 2022-33 in or about April 20, 2022, staff for the City of Ocala, Florida began to implement said preemployment fingerprinting and background checks as provided for therein; and

WHEREAS, said implementation of the preemployment fingerprinting and background check procedures contained in Ordinance 2022-33 required submission of said regulations to the State of Florida, Department of Law Enforcement and their further transmission of the regulations to the United States Federal Bureau of Investigation; and

WHEREAS, the State of Florida, Department of Law Enforcement and the United States Federal Bureau of Investigation reviewed said Ordinance 2022-33 for compliance with applicable laws and regulations including Section 166.0442, *Florida Statutes*, and United States Public Law 92-544 which was enacted by Congress in 1972 and which provides the authority for the United States Federal Bureau of Investigation to conduct criminal history record checks for non-criminal justice purposes; and

WHEREAS, the State of Florida, Department of Law Enforcement and the United States Federal Bureau of Investigation provided feedback with regard to the compliance of said Ordinance 2022-33 with the applicable laws and regulations and suggested a series of minor amendments and revisions; and

WHEREAS, the City of Ocala, Florida desires to comply with the requirements of all applicable state and federal laws and regulations with respect to the administration of preemployment fingerprinting and background checks as well as to follow and implement the series of minor, recommended changes provided by the State of Florida, Department of Law Enforcement and the United States Federal Bureau of Investigation; and

WHEREAS, the City of Ocala, Florida now desires to implement the minor, recommended changes to said Ordinance 2022-33 which were suggested by the State of Florida, Department of Law Enforcement and the United States Federal Bureau of Investigation through the amendment of the provisions of the *Code of Ordinances, City of Ocala, Florida* created by said ordinance; and

WHEREAS, the City Council of the City of Ocala, Florida finds and determines that this ordinance and the amendments to Sections 2-195 and Section 2-196, *Code of Ordinances, City of Ocala, Florida*, contained herein are further the protection of the health, safety and welfare of the citizens of Ocala, Florida; and

WHEREAS, the City Council of the City of Ocala, Florida finds and determines that this ordinance and the amendments to Sections 2-195 and Section 2-196, *Code of Ordinances, City of Ocala, Florida*, contained herein are in the best interest of the City of Ocala, Florida and its citizens; and

NOW THEREFORE, be it ordained, by the City Council of the City of Ocala, Florida, in regular session, as follows:

Section 1. Ratification, Adoption and Incorporation of Recitals.

The City Council of the City of Ocala, Florida ratifies the above-outlined recitals as true and correct; adopts and incorporates them herein as part and parcel of this ordinance.

Section 2. Purpose and Authority for Ordinance.

This ordinance is adopted for the purpose of amending and revising Sections 2-195 and 2-196, of the *Code of Ordinances, City of Ocala, Florida* so as to comply with relevant state and federal laws, policies and procedures, and is adopted pursuant to the authority granted by Chapter 166, *Florida Statutes*; Section 166.0442, *Florida Statutes*, Public Law 92-544, and other relevant provisions of Florida and federal law.

Section 3. Amendment of Sections 2-195 and Section 2-196, Code of Ordinances, City of Ocala, Florida.

Sections 2-195 and Section 2-196 of the *Code of Ordinances, City of Ocala, Florida* are hereby amended by replacement in their entirety with the following:

Section 2-195. Criminal History Record Checks for City of Ocala Employees and Appointees.

- A. It is hereby found by the City Council that all employment positions are critical to the security of public safety of its citizens and visitors.

- B. City Council may adopt a resolution exempting certain employment positions that it finds are not critical to the security or public safety and not appropriate for criminal history screenings and the City Council may update and amend said designations from time to time by resolution.
- C. Pursuant to Section 166.0442, *Florida Statutes*, any person applying for, or continuing employment or appointment in any employment position, unless designated by resolution as set forth in subsection (B) must, upon request, timely submit identifying information, including two sets of their fingerprints to the Ocala Police Department. Upon receipt, the Ocala Police Department will initially transmit this information to the State of Florida, Department of Law Enforcement for a check of state records and thereafter forward the same to the United States Federal Bureau of Investigation (F.B.I.) for a national criminal history record check, as required by F.B.I. policy.
- D. The City of Ocala will use the information obtained pursuant to subsection (C), or a failure to comply with subsection (C), to evaluate the subject person's eligibility for employment or appointment with the City, which may result in a denial of an application or termination of employment or appointment, or any other action the City believes is necessary for security or public safety.
- E. The City of Ocala will, upon request from any person subject of a criminal history screening pursuant to subsection (C) and after payment by such person of all reasonable applicable costs, furnish a copy of the related criminal history record to such person. The City will not be responsible for correcting any alleged or actual errors in such report and will not make any amendments or corrections to same unless notified or instructed by the appropriate law enforcement agency.
- F. The provisions of this Section are in addition to, and shall not supersede or replace, any other background screening, including without limitation criminal history background checks, which the City of Ocala may lawfully undertake.

Section 2-196. Criminal History Record Checks for Third Parties Doing Business for or in the City of Ocala.

- A. It is hereby found by the city that that there are:
 - a. Private contractors, employees of a private contractors, vendors, repair persons or delivery persons who are subject to licensing or regulation by the City of Ocala; and/or
 - b. Private contractors, employees of a private contractors, vendors, repair persons, for-hire chauffeurs, or delivery persons who have direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the City finds that preventing unsuitable persons from having such contact or access is critical to security or public safety; and

therefore, the City may require criminal history records checks of such persons for the protection of its citizens and visitors.

- B. City Council shall designate, pursuant to a duly adopted resolution, all third-party positions identified in subparagraph (A) above that will require criminal history records checks that are private contractors, employees of a private contractors, vendors, repair persons, or delivery persons who are subject to licensing or regulation by the City, or that are critical to the security or public safety and appropriate for criminal history screenings and the City Council may update and amend said designations from time to time by resolution.
- C. Pursuant to Section 166.0442, *Florida Statutes*, any third-party in a position designated by City Council resolution as in subparagraph (B) above must, upon request, timely submit identifying information, including two sets of their fingerprints to the Ocala Police Department. Upon receipt, the Ocala Police Department will initially transmit this information to the State of Florida, Department of Law Enforcement for a state criminal history record check and thereafter forward the same to the United States Federal Bureau of Investigation (F.B.I.) for a national criminal history record check, as required by F.B.I. policy.
- D. The City of Ocala will use the information obtained pursuant to subsection (C), or a failure to comply with subsection (C), to evaluate the subject person's licensing eligibility or access to certain public facilities, and which may result in a denial of an application or termination of accessibility to public facilities, or any other action the City believes is necessary for security or public safety.
- E. The City of Ocala will, upon request from any person subject of a criminal history screening pursuant to subsection (C) and after payment by such person of all reasonable applicable costs, furnish a copy of the related criminal history record to such person. The City will not be responsible for correcting any alleged or actual errors in such report and will not make any amendments or corrections to same unless notified or instructed by the appropriate law enforcement agency.
- F. The provisions of this Section are in addition to, and shall not supersede or replace, any other background screening, including without limitation criminal history background checks, which the city may lawfully undertake.

Section 4. Direction to Staff.

The City Council of the City of Ocala, Florida directs staff as follows:

- A. Staff is directed to transmit copies of this ordinance to the State of Florida, Department of Law Enforcement for their review, consideration and approval.
- B. Staff is further directed to take any and all other steps necessary to effectuate the adoption and implementation of this ordinance; and all other matters as provided for above and herein as well as to ensure the orderly and effective administration and implementation of the intent of this ordinance and the specific matters outlined herein.

Section 5. Direction to the Codifier.

It is the intention of the City Council of the City of Ocala, Florida that (1) this ordinance shall become and be made a part of the *Code of Ordinances, City of Ocala, Florida*, (2) the sections and paragraphs of this ordinance may be renumbered or relettered in order to accomplish said intention; (3) terms or headings not affecting the intent of this ordinance may be changed to further accomplish said intention; and (4) any scrivener's error(s) contained herein which do not affect the intent of this ordinance be corrected with the authorization of the City Manager or their designee and without the need for additional public hearings or consideration by the City Council.

Section 6. Repealing Inconsistent and/or Conflicting Provisions.

The City Council of the City of Ocala, Florida hereby specifically repeals, to the extent of any such conflict, any and all ordinances, resolutions, policies, procedures and/or other articles which are conflicting and/or inconsistent with this ordinance and the intent and direction provided by the City Council herein.

Section 7. Severability of Ordinance Provisions.

If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, it is the intent of the City Council of the City of Ocala, Florida that (1) such portion shall be deemed a separate, distinct and independent provision; (2) such holding shall not affect the validity of the remaining portions hereof; and (3) this ordinance be adopted as though any such provision was not included herein.

Section 8. Modifications Arising from Consideration at a Public Hearing.

It is the intention of the City Council of the City of Ocala, Florida that (1) the provisions of this ordinance may be modified as a result of its consideration by the City Council of matters that may arise during the public hearing(s) at which this ordinance is considered; and (2) any such modifications shall be incorporated into the final version of this ordinance.

Section 9. Effective Date of Ordinance.

This ordinance shall become effective immediately upon approval by the Mayor or becoming law without such approval.

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PASSED AND ADOPTED, in a regular session with a quorum present and voting, by the City Council of the City of Ocala, Florida this ____ day of January 2022.

CITY OF OCALA, FLORIDA

By: JAMES HILTY, SR., as
President of the City Council

ATTEST:

By: ANGEL JACOBS, as
City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: WILLIAM E. SEXTON, as
City Attorney

APPROVED / DENIED by me, as Mayor of the City of Ocala, Florida this ____ day of January 2023.

By: RUBEN KENT GUINN, as
Mayor

ORDINANCE NUMBER: _____
INTRODUCED: _____
ADOPTED: _____
LEGAL AD NUMBER: _____