49.36 Fingerprint-Based Criminal Record Background Checks

49.36.1 Purpose and Authorization

In order to protect the health, safety, and welfare of the inhabitants of the Town of Wellesley, and as authorized by Chapter 6, section 172B ½ of the Massachusetts General Laws as enacted by Chapter 256 of the Acts of 2010, this by-law shall require a) applicants for certain Town licenses permitting the engagement in specific occupational activities within the Town as enumerated in Section 49.36.2 below to submit to fingerprinting by the Wellesley Police Department, b) the Police Department to conduct criminal record background checks based on such fingerprints, and c) the Town to consider the results of such background checks in determining whether or not to grant a license.

The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI) as may be applicable to conduct on the behalf of the Town and its Police Department fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize FBI records in connection with such background checks, consistent with this by-law.

49.36.2 Applicant's Submission to Fingerprinting by the Wellesley Police Department

Any applicant for a license to engage in any of the following occupational activities within the Town shall submit a full set of fingerprints taken by the Wellesley Police Department within ten (l0) days of the date of the application for a license for the purpose of conducting a state and national criminal record background check to determine the suitability of the applicant for the license:

Manager of Alcoholic Beverage License
Hawker and Peddler
Owner or Operator of Public Conveyance
Dealer of Second-Hand Articles
Ice Cream Truck Vendor

At the time of fingerprinting, the Police Department shall notify the individual fingerprinted that the fingerprints will be used to check the individual's FBI criminal history records.

49.36.3 Police Department Processing of Fingerprint-Based Criminal Record Background Checks and Communication of Results

The Police Department shall transmit fingerprints it has obtained pursuant to Section 49.36.2 of this by-law to the Identification Section of the Massachusetts State Police, DCJIS, and/or the FBI as may be necessary for the purpose of conducting fingerprint-

based state and national criminal records background checks of license applicants specified in Section 49.36.2.

The Police Department shall provide the applicant with a copy of the results of his or her fingerprint-based criminal record background check and supply the applicant the opportunity to complete or challenge the accuracy of the information contained in it, including in the FBI identification record. The Police Department shall also supply applicants with information regarding the procedures for obtaining a change, correction, or updating of a criminal record, including a copy of 28 C.F.R. Part 16.34 pertaining to FBI identification records. The Police Department shall not utilize the fingerprint-based criminal record background check pursuant to the paragraph below until it has taken the steps detailed in this paragraph and otherwise complied with the Town's policy applicable to Town licensing-related criminal record background checks.

The Police Department shall communicate the results of fingerprint-based criminal record background checks to the applicable licensing authority within the Town. The Police Department shall indicate whether the applicant has been convicted of, or is awaiting final adjudication for, a crime that bears upon his or her suitability, or any felony or misdemeanor that involved force or threat of force, controlled substances or a sex-related offense.

49.36.4 Reliance on Results of Fingerprint-Based Criminal Record Background Checks

Licensing authorities of the Town shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in 49.36.2. A Town licensing authority may deny an application for a license on the basis of the results of a fingerprint-based criminal record background check if it determines that the results of the check render the subject unsuitable for the proposed occupational activity. The licensing authority shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability in making this determination. The licensing authority shall not deny a license based on information in a criminal record unless the applicant has been afforded a reasonable time to correct or complete the record or has declined to do so.

49.36.5 Compliance with Law, Regulation, and Town Policy

Implementation of this by-law and the conducting of fingerprint-based criminal record background checks by the Town shall be in accordance with all applicable laws, regulations, and Town policies, including, but not limited to, the Town's policy applicable to licensing-related criminal record background checks which shall include record retention and confidentiality requirements. The Town shall not disseminate the results of fingerprint-based criminal background checks except as may be provided by law, regulation, and Town policy. The Town shall not disseminate criminal record information received from the FBI to unauthorized persons or entities.

49.36.6 Fees
The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be one hundred dollars ($100). A portion of the fee, as specified in Mass. Gen. 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 Town for costs associated with the administration of the fingerprinting system.

49.36.7 Effective Date
This by-law shall take effect May 4, 2012.

Fingerprint-Based Criminal Record Background Check

Article 10, Special Town Meeting
October 12, 2011

Purpose and Authorization

- Amendment to state statute effective May 4, 2012
- Authorizes municipality to enact bylaw to require applicants for certain licenses to submit to full set of fingerprints
- Conduct state and national criminal record background check
- Information used to determine whether license application granted

Applicable Licenses

- Manager of alcoholic beverage license
- Hawker and peddler (includes door-to-door solicitor)
- Taxi and livery operator (includes driver)
- Dealer of second-hand articles
- Ice cream truck vendor

Procedure

- Applicant submits to fingerprinting by Wellesley Police Department
- WPD transmits fingerprints to Identification Section of Massachusetts State Police, Massachusetts Department of Criminal Justice Information Systems, Federal Bureau of Investigation
- WPD communicates results of criminal record background check to applicable licensing authority and provides applicant with copy of results

Current law

- Applies to:
  - Alcoholic beverage license - licensee, manager, assistant manager
  - Hawker and peddler (includes door-to-door solicitor)
  - Public conveyances (includes taxis and livery drivers)
  - Ice cream truck vendor

  Background check:
  - CORI - Massachusetts only; arraignment-based so includes arrests and convictions
  - Massachusetts does not have fingerprint-based system
  - No limit on period of look back except for public conveyances which is limited to 10 years

Proposed bylaw

- Criminal records background check includes:
  - CORI check
  - All states with fingerprint based system
  - FBI for state and national criminal records check
  - Reports convictions and cases awaiting final adjudication only
  - Not limited in look back
  - Broader database but results more restrictive than CORI (does not include arrests unless no final adjudication at time of background check)

Report

- Report shall indicate whether applicant has been convicted of, or is awaiting final adjudication for:
  - A crime that bears upon his or her suitability for proposed license; or
  - Any felony or misdemeanor that involved force or threat of force, controlled substance or was a sex-related offense

Use of Report

- Licensing authority shall use report for **sole** purpose of determining suitability of the person applying for license
- Licensing authority may deny license application on basis of results if it determines that the results of the background check render applicant unsuitable for proposed activity
- Licensing authority shall not deny license based on criminal record information unless applicant afforded time to correct or complete the record or declined to do so.

Next steps

- To Special Town Meeting for approval of bylaw
- Attorney General approval of bylaw
- Develop written policies and procedures for fingerprint based national criminal history records check system including business process for implementation of system, record retention and confidentiality of information
- Effective date of bylaw – May 4, 2012