

Sample Ordinance Providing for Criminal History  
Background Checks of Recreation Employees and Volunteers  
Prepared by J. Peter Jost, Esq.  
This Ordinance May be Reproduced and Used by Municipal Attorneys

Draft – 5/8/09

\_\_\_\_\_  
OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_  
STATE OF NEW JERSEY

ORDINANCE 2009- \_\_\_\_

**AN ORDINANCE SUPPLEMENTING THE GENERAL ORDINANCES  
OF THE \_\_\_\_\_ OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, NEW JERSEY,  
CHAPTER \_\_\_\_\_, \_\_\_\_\_ BY ADDING A REQUIREMENT FOR  
CRIMINAL HISTORY BACKGROUND CHECKS FOR RECREATION  
EMPLOYEES AND VOLUNTEERS**

**WHEREAS**, the municipal governing body of the \_\_\_\_\_ of \_\_\_\_\_ wishes to ensure that this municipality is providing the safest possible recreation programs for its youth; and

**WHEREAS**, the municipal governing body of \_\_\_\_\_ has recommended that all employees and volunteers of recreational, athletic, cultural, charitable, social or other activities, services or programs for persons younger than 18 years of age programs sponsored or co-sponsored by the municipality of \_\_\_\_\_, or in connection with the municipality of \_\_\_\_\_ Recreation Department (*Division/Commission/Committee/Program/Association*) or any other youth serving organizations, who have regular supervised or unsupervised access to minors involved in such programs, be required to submit to criminal history background checks at their own expense; and

**WHEREAS**, the municipality of \_\_\_\_\_ would like all youth programs using municipal facilities, and all programs that are funded or supported by the municipality of \_\_\_\_\_, in whole or in part (including but not limited to baseball, softball, soccer, football, basketball, etc.) be required to perform criminal background checks as a condition of using municipal facilities.

**WHEREAS**, P.L. 1999, Chapter 432 (N.J.S.A.15A:3A-1 et seq.) authorizes and provides for criminal history record background checks of employees and volunteers of non-profit youth serving organizations as defined in said statute; and

**WHEREAS**, N.J.S.A. 15A:3A-1 permits non-profit youth-serving organizations to request the State Police to perform a criminal background check on current and prospective employees or

volunteers, in order to check the criminal histories of those employees or volunteers who have direct contact with minors, in order to eliminate those with convictions for certain crimes and disqualify prospective employees and volunteers who have been convicted of certain offenses; and

**WHEREAS**, P.L. 2003, Chapter 199, Section 34 (N.J.S.A 40:48-1.4) provides that a municipality may enact an ordinance providing that an authorized municipal official or officer may request a criminal history record background check of any person for an official governmental purpose, including, but not limited to, employment, licensing and the procurement of services; and

**WHEREAS**, the ordinance shall provide that the person shall submit to being fingerprinted in accordance with applicable State, federal laws, rules and regulations, and shall further provide that the official or officer is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation; and

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the governing body of the municipality of \_\_\_\_\_, in the County of \_\_\_\_\_, State of New Jersey as follows:

§ \_\_\_\_\_, \_\_\_\_\_, of the Revised General Ordinances of the municipality of \_\_\_\_\_, is hereby supplemented as follows:

§ \_\_\_\_\_ **Criminal History Background Checks of Employees and Volunteers Involved in Recreation Programs.**

§ \_\_\_\_\_ **Definitions**

As used in this chapter, the following terms shall have the meanings indicated:

*“Criminal History Record Background Check”* – means a determination of whether a person has a criminal record by cross-referencing that person’s name and fingerprints with those on file with the Federal Bureau of Investigation, Identification Division and/or the New Jersey State Bureau of Identification in the Division of State Police.

*“Municipality/Township/Borough/Town/City or Municipal”* – means the Municipality/Township/Borough/Town/City of \_\_\_\_\_, in the County of \_\_\_\_\_, State of New Jersey.

*“Municipal-Sponsored Youth Programs”* – means any program sponsored by the municipality of \_\_\_\_\_, including any municipal employees, volunteer organizations created by the municipality, and all leagues, boards, committees and commissions affiliated with, falling within the purview, or acting for or on behalf of the municipality of \_\_\_\_\_ and having contact with persons under the age of 18 years.

*“Non-Sponsored Youth Program”* – means any youth program not sponsored by the municipality of \_\_\_\_\_, but that utilize municipal facilities or have affiliation with a municipal-sponsored youth program and having contact with persons under the age of 18 years.

*“Youth Program”* – means any program that allows for participation in activities by those persons under 18 years of age. Activities may include, but are not limited to, sporting or athletic activities, passive recreation groups, clubs or camps and trips or other activities whereby some control and responsibility for children is assigned to some person acting for or on behalf of a municipal-sponsored youth program or non-sponsored youth program, other than a parent or caregiver.

**§ \_\_\_\_\_ Non-Sponsored Youth Programs – Criminal background checks – Required for use of Municipal facilities.**

A. Prior to any club or organization, not defined as a municipal-sponsored youth program, being authorized to use municipal-owned facilities for functions participated in by children, all adults, those persons 18 years of age or older, in any way assisting in the function, including but not limited to coaches, assistant coaches, or similar positions, must provide the municipal Chief of Police or designee, or other chief law enforcement officer of the municipality, with findings of a criminal history background check obtained from the State Bureau of Identification in the New Jersey State Police.

B. The submission of background check findings must be based upon a check performed within three (3) years of the start of use of the municipal-owned facility. In the case of coaches performing duties as employees of a school district, the policy of background checks adopted by the individual school district shall be used to establish eligibility for use of municipal-owned facilities. In all cases the background check must comply with the provisions of any applicable laws regarding same, but not less detailed than those performed by the municipality for individuals involved in administering municipal-sponsored youth programs. All fees for individuals not administering a non-municipal-sponsored program shall be borne by the individual or program with which they are participating.

**§ \_\_\_\_\_ Municipal-Sponsored Youth Programs – Background checks.**

A. All adults, those persons 18 years of age or older, including but not limited to coaches, assistant coaches, or similar positions involved in educating, directing or supervising youth, and in any way assisting in a municipal-sponsored function participated in by children, shall submit sufficient information on forms supplied by the municipal Police Department or other enforcement authority from the New Jersey State Police, for the purpose of obtaining a criminal history background check with the State Bureau of Identification in the New Jersey State Police. Applications for background checks shall be processed by the municipal Chief of Police or other chief law enforcement authority of the municipality.

B. Based upon the Memorandum of Understanding executed between the municipality of \_\_\_\_\_ and the New Jersey State Police, the individual applying for the background

check shall authorize the municipal Chief of Police or other chief law enforcement officer of the municipality to be the recipient of the response from the State Police based upon the findings of the background check. Individuals involved in a municipal-sponsored youth function, and who are required to undergo background checks based upon this chapter, shall not be responsible for the costs involved with obtaining the criminal background check. The municipality shall bear the costs for the background checks for individuals qualified under this section.

C. All league officers and/or those individuals in charge of each recreation program are required to ensure compliance with this chapter for that league or program. The President or leader of each recreation program shall file an annual roster of individuals that are required to participate in the background check procedures of this chapter. The roster shall be on forms supplied by the municipality and shall contain a certification as to the accuracy and completeness of the roster and individual names. Any person who knowingly certifies a background check roster that excludes an individual required to be checked shall be in violation of this chapter and laws regarding false swearing.

**§ \_\_\_\_\_ Qualification – ID Card.**

A. Individuals engaged in providing recreation opportunities for, or on behalf of, the municipality of \_\_\_\_\_ shall be issued identification cards with appropriate expirations based upon the date of their individual background check. Individuals issued identification cards are required to display their card while in performance of their duty involving youth programs.

**§ \_\_\_\_\_ Disqualification.**

A. Upon receipt of a completed background check conducted by the State Bureau of Identification in the New Jersey State Police and/or the Federal Bureau of Investigation, Identification Division, the municipal Chief of Police or designee, other chief law enforcement officer of the municipality shall notify the applicant and the President or leader of the recreation program of affirmative or negative results. The determination of the municipal Chief of Police or other chief law enforcement officer is based upon section \_\_\_\_\_ B.1 of this chapter. Details in the background check that result in a negative determination by the State Police are not afforded to the municipal Chief of Police and are only available to the applicant upon making a formal request to the State Bureau of Investigation.

B. In the event the criminal background check reveals any prior convictions for crimes or offenses which negatively impact the health, safety and welfare of children, said person shall not be qualified to participate in any official capacity in any function form persons under the age of 18 years held at any Township-owned facilities. Such offenses shall include, but not to be limited to:

1. In New Jersey, any crime or disorderly persons offense:

(a) involving danger to the person, meaning those crimes and disorderly persons offenses

set forth in N.J.S.A. 2C:11-1 et seq., such as criminal homicide; N.J.S. A. 2C:12-1 et seq., such as assault, reckless endangerment, threats, stalking; N.J.S.A. 2C:13-1 et seq., such as kidnapping; N.J.S..A. 2C:14-1 et seq., such as sexual assault; or N.J.S.A. 2C:15-1 et seq., such as robbery;

(b) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:24-1 et seq., such as endangering the welfare of a child;

(c) involving theft as set forth in Chapter 20 of Title 2C of the New Jersey Statutes;

(d) involving any controlled dangerous substance or controlled substance analog as set forth in Chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S. 2C:35-10.

(e) any 4<sup>th</sup> degree offense or higher.

2. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in this section.

C. The list of crimes and violations contained in this section is for illustrative purposes only and shall not be construed as a limitation on those criminal activities or violations that would be grounds to disqualify a person from assisting with youth-related activities as indicated herein.

D. Refusal by individuals required to submit to background checks will result in an immediate dismissal of the individual from any municipal-sponsored activities requiring background checks. In addition, refusal to comply with this chapter by any individual falling within the scope of requirements for non-sponsored youth programs will forfeit that individual's ability to participate with the respective program. Refusal of a non-municipal sponsored youth program to subscribe to the requirements of this chapter shall forfeit that programs ability to use municipal facilities.

**§ \_\_\_\_\_ Frequency of Background Checks.**

A. All non-sponsored youth programs that have individuals subject to this chapter shall supply background checks for all of its participants prior to the individual being able to participate at any function at a municipal-owned facility to the extent covered by this chapter. Thereafter, every three (3) years a new background check shall be submitted to the Chief of Police, Municipal Administrator or Municipal Solicitor.

B. 1. All municipal sponsored youth programs that have individuals subject to this chapter shall direct those individuals to the Chief of Police for background checks prior to the individual being able to participate at any function sponsored by the municipality of \_\_\_\_\_. Thereafter, every three (3) years a new background check shall be submitted to the municipal Chief of Police or other chief law enforcement officer.

2. Individuals involved in municipal-sponsored youth programs who are required to undergo background checks shall be given an interim approval for participation only after submission to the Division of State Police for a background check. Interim approvals shall only be valid for the period of time that it takes to receive background checks results. Such interim approval shall not be valid for a period of time exceeding 45 days. Only one interim approval may be granted per individual.

§ \_\_\_\_\_ **Appeals of Disqualification.**

A. Any person whose criminal history background check disqualifies that person from employment or from volunteering, may appeal his or her disqualification.

1. *Appeal re: Accuracy of Record.* A person may challenge the accuracy of the criminal history record.

(a) A challenge to the accuracy of the report shall be filed with the municipal Chief of Police or other chief law enforcement officer, who shall coordinate the challenge with the New Jersey State Police.

2. *Appeal Alleging Rehabilitation.* A person may claim to be rehabilitated.

(a) No person may appeal a disqualification on the grounds of rehabilitation, if convicted of a 4<sup>th</sup> Degree Offense or Higher, if the person has been disqualified because that person has been convicted, adjudicated delinquent or acquitted by reason of insanity of aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of *N.J.S.A. 2C13:1*; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of *N.J.S.A. 2C:24-4*; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of *N.J.S.A. 2C:24-4*; luring or enticing pursuant to section 1 of P.L. 1993 c.291 (*N.J.S.A. 2C:13-6*); criminal sexual contact pursuant to *N.J.S.A. 2C:14-3b* if the victim is a minor; kidnapping pursuant to *N.J.S.A. 2C:13-2*, or false imprisonment pursuant to *N.J.S.A. 2C:13-3* if the victim is a minor and the offender is not the parent of the victim; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of *N.J.S.A. 2C:34-1*; or an attempt to commit any of these enumerated offenses

(b) *Appeals Committee.* An appeal based on rehabilitation shall be made to an Appeals Committee, which shall consist of the Chief of Police, the president or administrator of the municipal recreation program and municipal attorney. Any such appeal must be made within thirty (30) days of receipt of the notice of disqualification.

(c) *Rehabilitation Criteria.* In determining whether a person has affirmatively demonstrated rehabilitation, the Appeals Committee shall consider the following factors:

1. The nature and responsibility of the position which the convicted person would hold or has held, as the case may be;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the person when the offense was committed;
6. Whether the offenses was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense; and,
8. Any other evidence of rehabilitation, including good conduct in prison or the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who whoa have had the person under their supervision.

(d) If the Appeals Committee determines that the disqualified person has been successfully rehabilitated, it shall enter that person's name on the list of qualified employees and volunteers maintained by the municipal Chief of Police or other chief law enforcement officer of the municipality.

§ \_\_\_\_\_ **Privacy and Confidentiality.**

A. Any and all criminal background checks supplied to the municipal Chief of Police or other chief law enforcement officer shall be filed and maintained in a secure and locked cabinet or room and shall not be available to the public. The Chief of Police or other chief law enforcement officer of the municipality shall take appropriate steps to safeguard such records. The records shall be exempt from public disclosure under the common law or the New Jersey Right to Know Law. The records shall only be retained for such period of time as is necessary to serve their intended and authorized purpose, and thereafter shall be destroyed.

B. Access to criminal history record information for non-criminal justice purposes, including licensing and employment, is restricted to the members of the review committee, as authorized by federal or state statute, rule or regulation, executive order, local ordinance or resolution regarding obtaining and disseminating of criminal history record information obtained under this section.

C. The review committee shall limit its use of criminal history record information solely to the individual for which it was obtained, and the criminal history record information furnished shall not be disseminated to persons or organizations not authorized to receive the records for authorized purposes. This information shall be limited solely to the authorized purpose for which it was given and it shall not be disseminated to any unauthorized persons. Any person violating federal or state regulations governing access to criminal history records information may be subject to criminal and/or civil penalties.

§ \_\_\_\_\_ **Penalties**

A. Failure to comply with this Ordinance may result in the municipality withholding funding for the non-profit youth-serving organization, prohibiting the use of facilities, or withholding funding for facility maintenance.

B. Any individual who has been advised, verbally or in writing of his/her disqualification to participate and continues to participate upon conviction thereof in a proceeding before a court of competent jurisdiction be subject to the following fines:

1. A fine of not less than two hundred fifty dollars (\$250.00) and not more than one thousand five hundred dollars (\$1,500.00);
2. Each continuing violation of this chapter shall constitute a separate offense.

§ \_\_\_\_\_ **Severability.**

In the event that any portion of this Ordinance is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable there from and shall not be affected.

§ \_\_\_\_\_ **Ordinance Provisions Repealed**

Any ordinance provisions inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistency.

§ \_\_\_\_\_ **Effective Date**

This ordinance shall take effect immediately upon the approval and publication of notice of adoption as provided by law.

Attest:

\_\_\_\_\_  
, Clerk

\_\_\_\_\_  
, Mayor

First Reading: \_\_\_\_\_

Publication: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Published by Title: \_\_\_\_\_