

Ord.# 16-2015

AN ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING CHAPTER 43, "PERSONNEL," TO ADD ARTICLE III, "BACKGROUND CHECKS"

WHEREAS, the New Jersey Legislature enacted N.J.S.A. 15A:3A-1 et seq. permitting non-profit youth serving organizations to perform criminal history background checks on persons who have direct contact with minors in order to preclude those employees and volunteers who have been convicted of certain crimes; and

WHEREAS, the Township finds that it is in the safety and well-being of Township youth for those serving in youth programs to undergo a criminal history background check.

NOW THEREFORE, BE IT ORDAINED by the Township Council of the Township of Mount Olive, in the County of Morris, State of New Jersey that Chapter 43, "Personnel" of the Mount Olive Township Code, in Part I, "Administrative Legislation," is amended to add new Article III, "Background Checks" which shall read in its entirety as follows:

Article 43: Background Checks.

§ 43-7. Background check for employment.

The Township's Chief of Police, or his/her designee from the Police Department, is authorized to request a criminal history background check of any person for an official governmental purpose including, without limitation, employment, licensing, and the procurement of services.

§ 43-8. Background check for persons participating in any youth programs.

A. **Background check required.** Any person 18 years of age or older, at the time of commencement of participation in a supervisory role in any youth activity, regardless of the capacity (whether a volunteer or an employee) for any program or activity that is: a) organized by the Township of Mount Olive; b) organized and sponsored by the Mount Olive Township Recreation Department; c) covered by the Township of Mount Olive's insurance policy; d) a civic organization, association or league recognized by the Township of Mount Olive that utilizes Township athletic fields or other municipal buildings, and/or park and recreation facilities; and e) any organization, association or league not based in the Township which seeks a permit to use a Township athletic field, park or other recreational facility, shall undergo a mandatory background record check in accordance with N.J.A.C. 13:59-1.1 et seq. Each person shall file an application for the criminal background check with the State Police via its authorized vendor and submit to fingerprinting.

B. **Exemption.** Any celebrity guest or person whose participation in a youth activity is limited to only one (1) day per recreation season will be allowed to participate without undergoing a background check, so long as they are under the supervision of an approved background check participant.

§ 43-9. Records available.

The records which the Chief of Police, or his/her designee from the Police Department, is authorized to request and receive from an employee or volunteer shall be the criminal history record information from the Federal Bureau of Investigation, Identification Section, and the State Police Bureau of Identification; provided, however, that in the case of youth program volunteers and employees, neither the entity coordinating the program, nor the Township shall receive a copy of the detailed criminal record but will, instead receive from the State Police notification that the background check revealed information which would serve to disqualify the person who may then file an appeal pursuant to § **43-14**, described below.

§ 43-10. Grounds for disqualification.

Pursuant to the provisions of N.J.S.A. 15A:3A-3, a person may be disqualified from serving as an employee or volunteer of a youth-serving organization if that person's criminal history record background check reveals a conviction of any of the following crimes and offenses:

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

(1) Involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:11-1 et seq., 2C:12-1 et seq., 2C:13-1 et seq., 2C:14-1 et seq. or 2C:15-1 et seq.;

(2) 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.;

(3) Involving theft as set forth in Chapter **20** of Title 2C of the New Jersey Statutes;

(4) Involving any controlled dangerous 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.A. 2C:35-10.

B. 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 Subsection **A** of this section.

§ 43-11. Requests submitted to State Bureau of Investigation.

In order to obtain detailed criminal history record information, the Chief of Police, or his/her designee from the Police Department, shall request that the prospective employee or volunteer submit the required application, fee, and fingerprint data to the State Bureau of Identification via its authorized vendor. The State Bureau of Identification shall receive all criminal history record information from the Federal Bureau of Investigation, and shall disseminate that information directly to the applicant.

Upon submission of the fee, the applicant may request reimbursement from the Township for the fee on a form to be provided by the Township. Proof of payment must be submitted with the request. The Township shall reimburse the applicant within thirty (30) days of the request.

§ 43-12. Recognition of comparable programs.

Any person who has undergone a background check that meets the same standards as those conducted by the State Police, through its authorized vendor, who can provide proof of the background check and results, is exempt from the requirements contained herein, until three years have elapsed since the most current background check, so long as the most current background check is within six months from the date of his or her application in a comparable background check program, and further provided that it meets the threshold standards of the program utilized by the Township of Mount Olive.

§ 43-13. Term of effectiveness.

Each person who is required to submit to a background check in accordance with this chapter must submit to a new criminal background record check every three years if the person wishes to continue as a volunteer or employee with the youth program within the Township. This provision also affects any volunteer or employee associated with any organization, association or league not based in Mount Olive Township. Background record checks subsequent to the initial one may not involve fingerprinting.

§ 43-14. Appeals.

A. Any person who feels that he or she has been erroneously or wrongly prohibited from participation in any activities covered by this chapter may appeal to the Chief of Police, or his/her designee from the Police Department. The decision on appeal shall be final.

B. A person may challenge the accuracy of the criminal history record. The challenge shall be filed with the Chief of Police, or his/her designee from the Police Department, who may request that the applicant follow the procedure outlined in § **43-9**, to obtain a detailed criminal history check for the appeals process.

C. In the case of a person who claims to be rehabilitated, the claim shall be filed with the Chief of Police, or his/her designee from the Police Department, who may request that the applicant follow the procedure outlined in § **43-9**, to obtain a detailed criminal history check for the appeals process.

In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(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 offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense; or

(8) Any 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 have had the person under their supervision.

D. If it has been determined by the Chief of Police, or his/her designee from the Police Department, that the disqualified person has been successfully rehabilitated, the person shall be included on the list of qualified employees and volunteers.

E. No person may appeal a disqualification on the grounds of rehabilitation if:

(1) The person has been rejected 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. 2C:13-1;

(2) 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;

(3) Endangering the welfare of a child pursuant to Paragraph (4) of subsection b. of N.J.S.A. 2C:24-4;

(4) Luring or enticing pursuant to Section (1) of P.L.1993, c. 291 (N.J.S.A. 2C:13-6);

(5) Criminal sexual contact pursuant to N.J.S.A. 2C:14-3.b if the victim is a minor; kidnapping pursuant to N.J.S.A. 2C:13-2; or

(6) 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) of Paragraph (4) of Subsection b of N.J.S.A. 2C:34-1; or an attempt to commit any of these enumerated offenses.

F. Any appeal must be filed within 30 days after notification from the Township that the background check revealed information which would serve to disqualify the person.

G. Throughout the duration of any appeal that is filed with the Township, the person who filed the appeal shall have no involvement in any supervision, coaching or other involvement with youth in connection with any program or activity set forth in § **43-8(A)**.

H. The Township will not take any action to unnecessarily or unduly delay the appeal process and will make a determination on any appeal within 30 days from the date of appeal.

§ 43-15. Violations and penalties.

A. Failure to comply with this chapter by any association, league or organization recognized by the Township may result in the Township withholding funding for the youth-serving organization if applicable, prohibiting the use of park and recreational facilities, withholding funding for facility maintenance, or expulsion from all coaching and employment opportunities, if applicable.

B. Any individual who has been advised, verbally or in writing, of his/her disqualification to participate and continues to participate may be subject to a fine of not less than \$250 and not more than \$2,000. Each continuing violation shall constitute a separate offense.

§ 43-16. Privacy.

A. Access to criminal history record information shall be limited in accordance with law, including N.J.S.A. 15A:3A-1 et seq. and N.J.A.C. 13:59-1.1 et seq.

B. The results of any and all criminal background checks supplied to the Township of Mount Olive shall be safeguarded and filed and maintained in a secure cabinet or room, and shall not be made available to the public. The records shall be exempt from public disclosure under the common law or the New Jersey Open Public Records Act. 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.

C. Criminal history record information shall be limited in use solely by the individual(s) for which it was obtained, and shall not be disseminated to persons or organizations not authorized to receive the records. Any person violating federal or state regulations governing access to criminal history records information may be subject to criminal and/or civil penalties.

SECTION 2. All ordinances of the Township of Mount Olive, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portion of this ordinance.

SECTION 4. This ordinance may be renumbered for purposes of codification.

TOWNSHIP OF MOUNT OLIVE

Joe Nicastro, Mount Olive Township Council President

ATTEST:

Michelle Masser, Deputy Township Clerk