

1708th REGULAR MEETING SEPTEMBER 15, 2009

ORDINANCE #2009-22

AN ORDINANCE TO AMEND THE WOOD-RIDGE CODE SPECIFICALLY THOSE SECTION SET FORTH IN CHAPTER 68, ARTICLE II BY THE MODIFICATION OF THAT SECTION AUTHORIZING CRIMINAL HISTORY BACKGROUND CHECKS OF ANY PERSON WITH UNSUPERVISED DIRECT ACCESS TO MINORS PARTICIPAING IN ANY BOROUGH SPONSORED OR CO-SPONSORED PROGRAM IN CONNECTION WITH THE WOOD-RIDGE RECREATION COMMISSION.

BE IT ORDAINED, by the Mayor and Council of the Borough of Wood-Ridge, County of Bergen, New Jersey as follows:

SECTION 1: Existing Chapter 68, Article II entitled Criminal History Background Checks is hereby repealed.

SECTION 2: The new Chapter 68, Article II shall be as follows:

- A. Criminal History Background Checks of employees and volunteers involved with programs involving minors.
- B. Definitions relative to criminal history background ordinance:
 - i. "Criminal History Record Background Check" shall mean a determination of whether a person has a criminal record by cross-referencing that person's name, date of birth, social security number and/or fingerprints with those on file with the Federal Bureau of Investigation, New Jersey State Police and any agency deemed necessary by the contracted entity appointed by the Borough of Wood-Ridge to obtain criminal history background information.
 - ii. "Criminal History Record Information" shall mean information collected by criminal justice agencies concerning persons and stored in the computerized databases of New Jersey Courts and/or Law Enforcement Agencies or other states' computerized repositories containing criminal history record information consisting of identifiable descriptions and notations of arrests, indictments, or other formal criminal charges, and any dispositions arising there from, including convictions, dismissals, correctional supervision and release..
 - iii. "Department" means the Borough of Wood-Ridge Police Department.
 - iv. "Noncriminal Justice Purpose" shall mean any purpose,, other than administration of criminal justice or criminal justice purpose, including employment and licensing, for which applicant fingerprints or name search requests are submitted by authorized requesters, as required or permitted by a federal or state statute, rule or regulations, executive order, administrative code provision, local ordinance, resolution or by this section, to any Law Enforcement Agency or other states'

computerized repositories for the dissemination of criminal history record information.

- v. "Nonprofit Youth Servicing Organization or Organization" shall mean corporation, association or other organization established pursuant to Title 15 of the Revised Statutes, Title 15A of the New Jersey Statutes, or other law of this state, but excluding public and nonpublic schools, and which provides recreational, cultural, charitable, social or other activities or services for persons younger than 18 years of age.
- vi. "Borough Sponsored Programs" shall mean any programs sponsored by the Borough which provide and utilize Borough facilities and/or Borough property and/or are covered under the Borough's insurance.

C. Requests for criminal background checks.

- a. The Borough requires that all employees and volunteers of a nonprofit youth serving organization request through the Department, that the contracted entity conduct a criminal history record background check on each prospective and current employee or volunteer of the organization. A criminal history record background check at the same level performed by the same third party independent agency contracted by the Borough within one (1) year of the date of application to serve as an employee or volunteer of a nonprofit youth serving organization shall be accepted by the Borough as a valid criminal history record background check.
- b. The Borough shall facilitate a criminal history record background check only upon receipt of the written consent from the prospective or current employee or volunteer.

D. Conditions under which a person is disqualified from service.

- a. A person may be disqualified from serving as a employee or volunteer of a nonprofit youth serving organization if that person's criminal history record background check reveals a record of conviction of any of the following crimes or offenses:

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

2C:11 Homicide – All offenses

2C:12 Aggravated Assault; Endangering; Threats – All offenses

2C:13 Kidnapping – All offenses

2C:14 Sexual Offenses – All offenses

2C:15 Robbery – All offenses

2C:24 Offenses Against the Family, Children and Incompetents – All offenses

2C:35 Controlled Dangerous Substances – All offenses except paragraph (4) of subsection a. of N.J.S.2C:35-10.

(2) In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly person's offenses described in paragraph a, 1 of this subsection.

b. For purposes of interpreting the information recorded in a criminal history record to determine the qualifications of the employee or volunteer of a nonprofit youth servicing organization and/or the employee or volunteer involved with Borough sponsored programs involving minors, the Borough shall presume that the employee or volunteer is innocent of any charges or arrests for which there are no final dispositions on the record.

c. The determination of whether the information contained in the criminal history record background check is sufficient to disqualify an employee or volunteer shall be made by the contracted entity that is contracted by the Borough of Wood-Ridge. A person who is disqualified from employment or serving as a volunteer due to the results of a criminal history record background check shall be notified by the Borough Administrator that he or she has been disqualified. The disqualified person shall be entitled to file an appeal with the criminal background check appeal panel created pursuant to Section 4-44.1.

E. Submission, exchange of background information.

i. Prospective or current employees and volunteers of nonprofit youth serving organizations and/or employees and volunteers of Borough sponsored programs involving minors shall submit their name, address, fingerprints and written consent to the organization for the criminal history record background check to be performed. The organization shall submit this documentation to the designated contracted entity, which shall coordinate the background check. Thereafter, all subsequent background checks shall be submitted to the designated contracted entity every three years after the date of the initial check.

ii. The contracted entity shall act as a clearinghouse for the collection and dissemination of information obtained as a result of conducting criminal history record background checks pursuant to this section.

iii. The Borough may, in its discretion, engage the services of a qualified entity to conduct the criminal history record background checks authorized under this section.

F. Limitations on Access and Use of Criminal History Record Background Checks.

i. Access to criminal history record information for noncriminal justice purposes, including licensing and employment is restricted to authorized personnel on the nonprofit youth serving organization and/or the Borough sponsored program involving minors, on a need to know basis, as authorized by federal or state statute,

rule or regulation, executive order, administrative code, local ordinance or resolution regarding obtaining and dissemination of criminal history record information obtained under this section.

- ii. Such persons or organizations shall limit their use of criminal history record information solely to the authorized purpose for which it was obtained and criminal history record information furnished shall not be disseminated to persons or organizations not authorized to receive the records for authorized purposes. Use of this record shall be limited solely to the authorized purpose for which it was given and it shall not be disseminated to any unauthorized persons. This record shall be destroyed immediately after it has served its intended and authorized purpose. Any person violating federal or state regulations governing access to criminal history record information may be subject to criminal and/or civil penalties.

G. Employee or Volunteer May Challenge Accuracy or Report

If this criminal history record may disqualify an applicant or existing employee or volunteer for any purpose, the Borough shall provide the disqualified person with an opportunity to challenge the accuracy of the information contained in the criminal history record. The disqualified person shall be afforded a reasonable period of time to challenge and correct this record. A person is not presumed guilty of any charges or arrests for which there are no final dispositions indicated on the record.

H. Appeal Process and Appeal Panel

- i. Criminal Background Check Appeal Process. If the Criminal Background Check disqualifies and employee or volunteer or denies the challenge concerning the accuracy of a criminal history report, the employee or volunteer may appeal that determination by filing a written notice of appeal with the Clerk of the Borough of Wood-Ridge no later than 20 days after receiving the determination from the Borough Administrator. Any appeal requested shall proceed before the Criminal Background Check Appeal Panel.
- ii. Criminal Background Check Appeal Panel. In order to monitor and supervise the enforcement of this section by the Borough Administrator, the Borough of Wood-Ridge hereby creates a Criminal Background Check Appeal Panel, which shall consist of three members, the Chief of Police, Borough Administrator and Borough Attorney.
- iii. Powers of the Appeal Panel. The Criminal Background Check Appeal Panel is granted and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this section, including but not limited to holding hearings and adjudicating appeals by employees and volunteers dissatisfied with the determination of the Criminal Background Check concerning the disqualification of the employee or volunteer and/or the accuracy of the criminal history record.

SECTION 3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 4. All ordinances of the Borough of Wood-Ridge to the extent that same are not inconsistent with this Ordinance and/or the Borough Form of Government Law shall remain in full force and effect until modified or repealed pursuant to law. All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

SECTION 5. If any section, subsection, paragraph, sentence, clause or word of this Ordinance shall be adjudged invalid by a Court of competent jurisdiction, then and in such event, said invalidity shall not effect the viability of the remaining portions of this Ordinance.

SECTION 6. This Ordinance shall become effective immediately upon adoption and publication according to law.

SECTION 7. Upon this ordinance taking effect after publication and passage according to law, the Borough Administrator shall forward a copy of this Ordinance to the organizations that must comply with this Ordinance. The Borough Administrator shall also be responsible for providing this information to any new organization that may exist in the future to ensure compliance with the provisions of this Ordinance.

APPROVED:

ATTEST:

PAUL A. SARLO
Mayor

DIANE THORNLEY
Borough Clerk

Introduction: September 15, 2009
Publication: September 24, 2009
2nd & Final: October 20, 2009
Publication: October 29, 2009