

LEGAL NOTICE
ORDINANCE NO. 51
2024
TOWNSHIP OF WAYNE
COUNTY OF PASSAIC
STATE OF NEW JERSEY

AN ORDINANCE ESTABLISHING ARTICLE VIII OF CHAPTER 129 ENTITLED
"RECREATION EMPLOYEES AND VOLUNTEERS"

WHEREAS, the Township seeks to maintain the health, safety, and welfare of the general public by implementing safeguards regarding the hiring of recreation employees and volunteers within the Township.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Wayne in the County of Passaic, State of New Jersey, that Article VIII of Chapter 129 to be entitled "Recreation Employees and Volunteers" is hereby established and implemented as follows:

SECTION 1. Chapter 129, Parks and Recreation, Article VIII (Recreation Employees and Volunteers) of the Code of the Township of Wayne is hereby established to read as follows [additions by bold, deletions by strikethrough]:

§ 129-48 Definitions.

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

CRIMINAL HISTORY RECORD BACKGROUND CHECK

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.

CRIMINAL HISTORY RECORD INFORMATION OR CHRI

Shall mean information collected by criminal justice agencies concerning persons and stored in the computerized data bases of the New Jersey State Police SBI Criminal History Information System, the National Law Enforcement Telecommunications System or other states' computerized repositories and notations of arrests, indictments, or other formal criminal charges, and any dispositions arising there from, including convictions, dismissals, correctional supervisions and release.

DEPARTMENT

Shall mean the Wayne Parks & Recreation Department.

MUNICIPAL-SPONSORED YOUTH PROGRAMS

Any program sponsored by the Township of Wayne, 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 Wayne and having contact with persons under the age of 18 years.

MUNICIPALITY/TOWNSHIP/BOROUGH/TOWN/CITY or MUNICIPAL

The Township of Wayne, in the County of Passaic, State of New Jersey.

NONSPONSORED YOUTH PROGRAM

Any youth program not sponsored by the municipality of Wayne but that utilizes municipal facilities or has affiliation with a municipal-sponsored youth program and has contact with persons under the age of 18 years.

STATE BUREAU OF IDENTIFICATION OR SBI

Shall mean the New Jersey State Bureau of Identification created by P.L. 1930, c. 65 (N.J.S.A. 52: 1-12 et seq.) a bureau within the New Jersey Division of State Police.

YOUTH PROGRAM

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.

§ 129-49 Background checks for non-sponsored youth programs using 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 conduct background checks of their paid employees and volunteers, independent of the Township, as a prerequisite to hire or appointment.
- B. Any club or organization must keep a record of the background check in a secure manner in order to protect the confidentiality of the applicant.
- C. All fees for individuals administering a non-municipal-sponsored program shall be borne by the individual or program with which they are participating.

§129-50 Background checks for municipal-sponsored youth programs.

- 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. 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 article, 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 the individuals qualified under this section.
- C. All league officers and those individuals in charge of each recreation program are required to ensure compliance with this article for that league or program. The president or leader of each recreation program shall file an annual certification of the roster of individuals that are required to participate in the background check procedures of this article. Any person who knowingly certifies a background check roster that excludes an individual required to be checked shall be in violation of this article and laws regarding false swearing.

§129-51 Identification cards.

Individuals engaged in providing recreation opportunities for, or on behalf of, the municipality of Wayne shall be issued identification cards with appropriate expirations based upon the date of their individual background check. At all times, individuals must display their identification card while in performance of their duty.

§129-52 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, or 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 Subsection B of this section. 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 for 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.A 2C:35-10.
- e) Any 4th 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 article 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 article shall forfeit that program's ability to use municipal facilities.

§129-53 Frequency of background checks.

A. All non-sponsored youth programs that have individuals subject to this article shall conduct background checks for all of their participants prior to the individual being able to participate at any function at a municipal-owned facility to the extent covered by this article. Thereafter, every three years a new background check shall be conducted for individual who have already undergone a prior background check.

B. All municipal-sponsored youth programs that have individuals subject to this article 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 Wayne. Thereafter, every three years a new background check shall be submitted to the municipal Chief of Police or other chief law enforcement officer.

C. 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 check 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.

§ 129-54 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 4th 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 the municipal Attorney. Any such appeal must be made within 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:

- i. The nature and responsibility of the position which the convicted person would hold or has held, as the case may be;
- ii. The nature and seriousness of the offense;
- iii. The circumstances under which the offense occurred;
- iv. The date of the offense;
- v. The age of the person when the offense was committed;

- vi. Whether the offense was an isolated or repeated incident;
- vii. Any social conditions which may have contributed to the offense; and
- viii. 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 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.

§129-55 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 noncriminal 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 article.
- 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.

§129-56 Volunteer Handbook

Following the successful completion of the criminal background check, all volunteers shall be provided with a copy of the Township's Volunteer Handbook. Each volunteer selected must sign a written acknowledgement that they have been provided a copy of the handbook and agree to comply with the terms contained therein. Failure to return the acknowledgement form in a timely manner may result in the disqualification of the volunteer.

§129-57 Violations and penalties.

- A. Failure to comply with this article may result in the municipality withholding funding for the nonprofit 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, shall be subject to the following a fine of not less than \$250 and not more than \$2,500.**

SECTION 2. All other provisions of Chapter 129 of the Code of the Township of Wayne shall remain unchanged.

SECTION 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause, phrase, or any other part of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the validity of the remaining sections, subsections, sentences, clauses, and phrases of this Ordinance, but shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 4. Repeal of Inconsistent Provisions. All ordinances or parts thereof in conflict or inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

SECTION 5. Codification. This Ordinance shall be a part of the Code of the Township of Wayne as though codified and fully set forth therein. The Township Clerk shall have this ordinance codified and incorporated in the official copies of the Code. The Township Clerk and the Township Attorney are authorized and directed to change any Chapter, Article and/or Section number of the Code of the Township of Wayne in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

SECTION 6. This ordinance shall take effect twenty days after final passage by Council and approval by the Mayor in the manner prescribed by law at N.J.S.A. 40:69A-181.

ATTEST:

PAUL V. MARGIOTTA
TOWNSHIP CLERK

RICHARD JASTERZBSKI
TEMPORARY COUNCIL PRESIDENT

NOTICE

I hereby certify that the aforementioned ordinance was published in the Herald News, a newspaper published in the County of Passaic and circulated in the Township of Wayne, in the issues of August 28, 2024 and September 11, 2024.

PAUL V. MARGIOTTA
Township Clerk

This ordinance is hereby
approved this 5th day
of September 2024.

ADOPTED ON: September 4, 2024

CHRISTOPHER P. VERGANO
Mayor