

ORDINANCE NO. 2017:20

**AN ORDINANCE TO AMEND CHAPTER III ENTITLED "POLICE REGULATIONS"
OF THE REVISED GENERAL ORDINANCES OF THE
BOROUGH OF NEW MILFORD, SECTION 3-10A ENTITLED
"CRIMINAL HISTORY BACKGROUND CHECKS"**

WHEREAS, the Mayor and Council have been advised that the present ordinance does not adequately address the needs that presently affect the residents of New Milford; and

WHEREAS, the matter has been reviewed by the Police Department, the Borough Administrator and the Recreation Director, and a recommendation has been made to the Mayor and Council; and

WHEREAS, the Mayor and Council of the Borough of New Milford wish to amend Chapter III entitled "Police Regulations" to address the needs that presently affect the residents of New Milford;

NOW THEREFORE BE IT ORDAINED, by the Mayor and Council of the Borough of New Milford that Chapter III, Section 3-10A, Criminal History Background Checks, is hereby repealed and replaced in its entirety as follows:

3-10A CRIMINAL HISTORY BACKGROUND CHECKS.

3-10A.1 Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Criminal history record background check shall mean a determination of whether a person has a criminal record by cross-referencing that person's name and/or fingerprints with those on file with the Federal Bureau of Investigation, Identification Division and the State Bureau of Identification in the Division of State Police or other criminal record data base.

Review Committee or *Committee* shall mean a three (3) member committee consisting of the Recreation Director, the Borough Administrator, and the Chief of Police or Acting Chief of Police in his or her absence. The Committee shall be charged with the review of all appeals by any volunteer whose criminal history background check reveals a disqualifying criminal conviction.

Sponsored shall mean leagues and recreation activities run directly by the Borough of New Milford's Recreation Department.

Supervised shall mean to have the direction and oversight of the performance of others.

Unsupervised shall mean not supervised or not under constant observation.

Volunteer shall mean any person involved with a Borough sponsored activity or sports league who has regular unsupervised direct access to minors as a result of their involvement with the activity.

3-10A.2 Request for Criminal History Record Background Checks: Costs.

- a. The Borough of New Milford requires a criminal history record background check on each prospective and current volunteer with access to minors. Volunteers must make application for this criminal history record background check directly through the Borough's designated provider and all applications must be approved prior to serving.
- b. At the written request of the volunteer to the Recreation Director, the Borough may reimburse the prospective volunteer the cost associated with conducting the criminal history record background checks required by this section, in accordance with the fees established by the Borough's designated provider.
- c. The Borough will not incur any additional costs related to challenge(s) due to disqualification.
- d. Any person who, by virtue of their occupation, is required by statute to undergo a Federal and State criminal history record background check similar in nature to the requirements contained herein, and who can provide proof of the results of such background check, is exempt from the requirements hereunder until three (3) years has elapsed since the most current background check.

3-10A.3 Conditions Under Which a Person Is Disqualified from Service.

- a. The Borough's designated background check provider shall inform the Recreation Director, whether the person's criminal history record background check reveals a conviction of a disqualifying crime or offense as specified in subsection below (which shall be considered confidential). Upon notice of disqualification the Recreation Director shall turn over to the Review Committee, any and all information received and all information received shall be deemed confidential, except as otherwise provided herein.
- b. A person shall be disqualified from serving as a volunteer if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses (but this list is not all encompassing and the Borough is not specifically limited to only these offenses as being disqualifying) or as further set forth in 3-10A.6:
 1. In New Jersey, any crime or disorderly persons offense:
 - (a) Involving danger to the person, meaning those crimes and disorderly persons offenses as set forth in N.J.S.A. 2C:11-1, et seq., including but not limited to criminal homicide; N.J.S.A. 2C:12-1, et seq., including but not limited to assault, reckless endangerment, threats, stalking; N.J.S.A. 2C:13-1, et seq., including but not limited to kidnapping; N.J.S.A. 2C:14-1, et seq., including but not limited to sexual assault; or N.J.S.A. 2C:15-1, et seq., including but not limited to 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., including but not limited to 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..
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.

3-10A.4 Submission, Exchange of Background Information.

- a. Upon approval to volunteer by the Recreation Director or his/her designee, the prospective volunteer shall submit all required personal information for the criminal history record background check to be performed directly to the Borough's designated provider in a manner determined by that provider. Thereafter, all subsequent background checks on approved volunteers shall be required at a minimum of every three (3) years after the date of the initial check.
- b. If required, the New Milford Borough Police Department shall collect and disseminate any information obtained as a result of conducting the criminal history record background checks pursuant to this section.

3-10A.5 Limitations on Access and Use of Criminal History Record Information.

- a. Access to criminal history record information for noncriminal justice purposes, including licensing and employment, is restricted to only 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.
- b. 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 any unauthorized persons. Any person violating any controlling Federal or State regulations governing access to criminal history records information may be subject to criminal and/or civil penalties.

3-10A.6 Challenge of Accuracy of Report.

- a. A person is not presumed guilty of any charges or arrests for which there are no final dispositions indicated on the criminal history record background check, however any pending disqualification event, or disqualification event on appeal shall be binding until such time as the matter is concluded. In the event the matter is concluded without resulting in a disqualifying event, the Volunteer may reapply.
- b. Upon receipt of information of disqualification, the Review Committee shall promptly provide written notice to a prospective volunteer whose criminal history record background check reveals a disqualifying conviction. The person shall have thirty (30) days from the receipt of that notice to petition the Review Committee (in writing addressed to the Borough's Administrator), of an intention to challenge and/or review the accuracy of the information received and the Committee's determination. The individual shall cite reasons substantiating the challenge and review.

- c. Notwithstanding the criteria set forth in subsection 3-10A.3 of this section, a person may still be permitted to serve as an employee or volunteer, if the person can affirmatively demonstrate rehabilitation to the Review Committee. In determining whether a person has affirmatively demonstrated rehabilitation, the Review Committee in its sole discretion, 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 and the victim (if any) when the offense was committed;
 - 6. Whether the offense was an isolated or repeated incident;
- d. The Review Committee shall promptly advise an organization in writing if a current or prospective employee or volunteer whose criminal history record background check reveals a disqualifying offense has affirmatively demonstrated rehabilitation under this section.
- e. The potential demonstration of rehabilitation shall not apply to persons who have been convicted, adjudicated, delinquent or acquitted by reason of insanity.
- f. When the Review Committee provides written notification to an individual stating whether the criminal history record background check performed pursuant to this section reveals a disqualifying offense, or stating that the person has affirmatively demonstrated rehabilitation under this chapter, the Review Committee may file that written notification with the Borough of New Milford Police Department.
- g. The Borough of New Milford Police Department shall keep any such written notification received from the Review Committee on file for three (3) years from the date it was issued.
- h. The Review Committee may request the Borough of New Milford Police Department to review its files to determine if there is written notification on file stating whether a criminal history record background check of a current or prospective volunteer revealed a disqualifying offense, or stating that the person has affirmatively demonstrated rehabilitation under this section. A current or prospective volunteer shall not be required to submit to another criminal history record background check if such written notification was issued within the past three (3) years.
- i. No person or entity shall be held liable in any civil or criminal action brought by any party based on any written notification that may be on file with the Borough of New Milford Police Department pursuant to the provisions of this section.