

O:2006-01

**ORDINANCE AMENDING THE CODE OF THE TOWN OF
PHILLIPSBURG TO IMPLEMENT A CRIMINAL HISTORY
BACKGROUND CHECK REQUIREMENT FOR TOWN VOLUNTEERS**

BE IT ORDERED by the Town Council of the Town of Phillipsburg, County of Warren, State of New Jersey, as follows:

Section A

The Town Council of the Town of Phillipsburg (the “Town”), as a body corporate and politic organized under the laws of the State of New Jersey and situated in County of Warren, hereby amends the Code of the Town of Phillipsburg to implement a mandatory criminal history background check requirement for Town volunteers.

Section B

The Town Council is empowered to act pursuant to its general police powers pursuant to N.J.S.A. 40:69A-29.

Section C

The Town Code of the Town of Phillipsburg is hereby amended to include the following new Chapter:

Chapter _____

Mandatory Criminal History Background Checks

§ ____-1. Authority to request background check; cost.

A. The Township Administrator and/or Chief of Police are hereby authorized to require a criminal history background check of any person, in accordance with N.J.S.A. 40:48-1.4, for any official governmental purpose, including, but not limited to, all current volunteers and all applicants for volunteer positions involved with minors, the elderly or the infirm, as well as for all volunteers and applicants for volunteer fire and rescue positions. All persons subject to the mandatory criminal history background checks under this Chapter shall submit to being fingerprinted

in accordance with applicable state and federal laws, rules and regulations. The Town Administrator and/or Chief of Police are authorized to exchange fingerprint data with and receive criminal history information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation. Any person who has submitted to a criminal background check, upon request, shall be permitted to review the results of the check.

B. The Town, in its discretion, may charge any person required to submit to a criminal background check the actual cost paid to outside agencies for obtaining the criminal history or any percentage thereof.

§ ___-2. Disqualification from service for certain crimes and offenses.

A. A person will be automatically disqualified from serving as a volunteer of a Town-sponsored program involving minors, the elderly or infirm, or serving with the fire and rescue operations if that person refuses to submit to the mandatory criminal history background check required by this ordinance.

B. A person may also be disqualified from serving as a volunteer of a Town-sponsored program involving minors, the elderly or infirm, or serving with the fire and rescue operations if that person's criminal history background check results reveal a record of conviction for any of the following crimes or offenses:

(1) In New Jersey, any crime or disorderly person's offense involving danger to others or dishonesty, including, but not limited to the following:

N.J.S.A. 2C:11-1 et seq. (Criminal Homicide);

N.J.S.A. 2C:12-1 et seq. (Assault; Endangering; Threats);

N.J.S.A. 2C:13-1 et seq. (Kidnapping and Related Offenses);

N.J.S.A. 2C:14-1 et seq. (Sexual Offenses);

N.J.S.A. 2C:15-1 et seq. (Robbery and Carjacking);

N.J.S.A. 2C:16-1 et seq. (Bias Crimes);

N.J.S.A. 2C:20-1 et seq. (Theft and Related Offenses);

N.J.S.A. 2C:21-1 et seq. (Forgery and Fraud);

N.J.S.A. 2C:24-1 et seq. (Offenses Against the Family, Children and Incompetents);

N.J.S.A. 2C:25-1 et seq. (Domestic Violence);

N.J.S.A. 2C:34-1 et seq. (Public Indecency); and

N.J.S.A. 2C:35-1 et seq. (Controlled Dangerous Substances)

(2) In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly person offenses set forth above or of a similar nature.

C. If the criminal history background check results will result in the disqualification of a volunteer or applicant for any reason, such person shall be provided an opportunity to challenge the accuracy of the information contained therein. The person shall be afforded a reasonable period of time to correct their record and provide an amended record. Failure to do so within a reasonable period shall result in disqualification.

D. The Town Administrator is hereby designated as the person for any appeal that is brought forth by any person deemed disqualified as a result of a criminal history check. The person shall have thirty (30) days from the receipt of the notice of disqualification to petition the Administrator for a review.

E. A current volunteer or applicant for a volunteer position need not be automatically disqualified from serving as a volunteer on a basis of conviction disclosed in a criminal history background check if said person has affirmatively demonstrated to the Administrator clear and convincing evidence of his or her rehabilitation. The Administrator may consider the following factors:

- (1) The nature and responsibility of the position which the convicted person would hold;
- (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; and

(8) Including, but not limited to, any evidence of rehabilitation, including good conduct, counseling or psychiatric treatment received.

Section D

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistencies.

Section E.

If any section, subsection, paragraph, phrase or sentence of this ordinance is, for any reason, declared to be unconstitutional or invalid, such section, subsection, paragraph, phrase or sentence shall be deemed severable.

Section F.

This ordinance shall take effect immediately upon final publication as provided by law.

CERTIFICATION

I, Michele D. Broubalow, Municipal Clerk for the Town of Phillipsburg, do hereby certify that the foregoing is a true copy of an Ordinance duly adopted by the Town Council of the Town of Phillipsburg at their January 17, 2006 Meeting.

MICHELE D. BROUBALOW, RMC