

O: 2013-12

**ORDINANCE OF THE TOWN OF PHILLIPSBURG,  
COUNTY OF WARREN, STATE OF NEW JERSEY,  
AMENDING CHAPTERS 140-8 AND 140-9 OF THE CODE  
OF THE TOWN OF PHILLIPSBURG REGARDING  
BACKGROUND CHECKS**

**BE IT ORDAINED** by the Council of the Town of Phillipsburg, County of Warren, State of New Jersey, that Chapter 140-8 and 140-9 of the Code of the Town of Phillipsburg are hereby deleted in their entirety and replaced as follows:

**Section 1.**

140-8. Authority to Request Background Check; Exemption; Cost

A. The Town Administrator and/or Clerk 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 adults, those persons eighteen (18) years of age or older, including but not limited to, coaches, assistant coaches, umpires or similar positions involved in educating, directing or supervising youth in a Town-sponsored youth program and those volunteers of a Town-sponsored program involving the elderly or infirm, or those volunteers serving with the fire and rescue operations of the Town. All persons subject to the mandatory criminal history background checks under this article 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 from the State Bureau of Identification in the Division of the State Police and Federal Bureau of Investigation. Any person who has submitted to a criminal history background check, upon request, shall be permitted to review the results of the check. All fire and squad volunteers who were active prior to enactment of this article shall be exempt and not required to have a criminal history background check.

B. The Town, in its discretion, may charge to 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.

**Section 2.**

140-9. Background check required; disqualification from service for certain crimes and offenses; enforcement; appeals procedure

A. All adults, those persons eighteen (18) years of age or older, including but not limited to, coaches, assistant coaches, umpires or similar positions involved in educating, directing or supervising youth in a Town-sponsored youth

program, or in a Town-sponsored program involving the elderly or infirm, or those volunteers serving with the fire and rescue operations of the Town, shall submit required information for the purpose of obtaining a criminal history background check. Refusal by individuals required to submit the background checks will result in a dismissal of the individual from any Town-sponsored activity requiring background checks.

- B. Upon receipt of a completed background check conducted by the State Bureau of Identification in the New Jersey State Police, the Chief of Police of the Town of Phillipsburg or his designee shall notify the applicant, as well as the appropriate department head or volunteer organization of affirmative or negative results.
- C. In the event the criminal background check reveals any prior convictions for crimes or offenses set forth in N.J.S.A. 15A:3A-3 in the case of a Town-sponsored youth organization, or for all other Town-sponsored programs, 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), or in any other state or jurisdiction, conduct which, if committed in New Jersey would constitute any of the crimes or disorderly persons offenses set forth above or of a similar nature, then that individual shall be prohibited from participating in any Town-sponsored youth programs or Town-sponsored programs involving the elderly or infirm, or with serving with the fire and rescue operations of the Town, all subject to the appeal process set forth below.
- D. In the case of Town-sponsored youth programs, not less than thirty (30) days prior to the start of the Town-sponsored activity, the head of each volunteer youth organization must submit to the Director of the Recreation Department, the Chief of Police and the Town Clerk, a certified list of volunteers who the volunteer organization expects to be involved in the activities with the youth. The Director of the Recreation Department shall not release equipment, fields or facilities to a volunteer organization until such time as all identified participants have demonstrated compliance with 140-9(A).
- E. In the event that a volunteer continues to participate in a Town-sponsored youth program requiring background checks despite being advised of the inability to do so, the Director of the Recreation Department shall prohibit, in

the Director's sole discretion, the use of Town fields and equipment by the offending youth organization until such time as the youth organization prohibits the ineligible volunteer from participating in the Town-sponsored program or the ineligible volunteer is made eligible as set forth in this Chapter.

- F. All results of criminal background checks shall be filed and maintained in a secure and locked cabinet or room under the control of the Phillipsburg Police Department and shall not be available to the public. 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 as is necessary to serve their intended and authorized purpose, and in conformance with the State of New Jersey Division Retention Schedule.
- G. All Town-sponsored programs that have individuals subject to this Chapter shall ensure that background checks are renewed no less than every three (3) years.
- H. If the criminal history background check 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 the record and provide an amended record. Failure to do so within a reasonable period shall result in disqualification.
- I. The 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 background check. The person shall have thirty (30) days from receipt of the notice of disqualification to petition the Administrator for a review.
- J. A current volunteer or applicant for a volunteer position need not be automatically disqualified from serving as a volunteer on the basis of a 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 3 - Severability**

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

**Section 4 - Repealer**

Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

**Section 5 - Effective Date**

This Ordinance shall take effect as required by law.

**ATTEST:**

**TOWN OF PHILLIPSBURG**

\_\_\_\_\_  
VICTORIA L. KLEINER,  
Acting Municipal Clerk

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HARRY L. WYANT  
Mayor

DATED:

**CERTIFICATION**

I, Victoria L. Kleiner, Acting 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 at their June 18, 2013 meeting.

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VICTORIA L. KLEINER,  
Acting Municipal Clerk