

Ordinance #2005-1005

AN ORDINANCE AUTHORIZING CRIMINAL HISTORY BACKGROUND CHECKS OF ANY PERSON WITH UNSUPERVISED DIRECT ACCESS TO MINORS PARTICIPATING IN ANY BOROUGH-SPONSORED OR CO-SPONSORED PROGRAM IN CONNECTION WITH THE MANVILLE RECREATION COMMISSION.

WHEREAS, the Mayor and Council of the Borough of Manville wish to ensure that the Borough is providing the safest possible recreational and other programs for its youth; and

WHEREAS, N.J.S.A. 15A:3A-1, et seq., permits the Borough to request that the Attorney General's Office conduct a criminal history record background check on each prospective and current person with unsupervised direct access to minors participating in any Borough-sponsored or co-sponsored program in connection with the Manville Recreation Commission; and

WHEREAS, the Director of Recreation recommends that all such current and prospective persons with unsupervised direct access to minors involved with such youth programs be required to submit to such criminal history record background checks at their own cost; and

WHEREAS, the Borough desires that all youth programs using Borough facilities and/or which are funded by the Borough in whole or in part such as Manville Youth Athletic League and Manville Soccer Club, and the like, be required to perform criminal background checks on any person with unsupervised direct access to minors, as a condition of using the Borough facilities.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Manville, County of Somerset, and State of New Jersey, as follows:

SECTION I. DEFINITIONS

1. "Sponsored" shall mean leagues run directly by the Manville Recreation Commission, including oversight, control and/or fiscal contribution.
2. "Co-Sponsored" shall mean Borough provision of funding or facilities, including maintenance of facilities.
3. "Criminal history record background check" means a determination of whether a person has a criminal record by cross-referencing that persons name and 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.
4. "Department" means the Borough of Manville Police Department.

5. “Nonprofit youth serving organization” or “organization” means a 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 the State and is exempt from Federal Income Taxes, but excluding public and nonpublic schools, and which provides sports related activities or services for persons younger than eighteen (18) years of age, in connection with Borough of Manville sponsored or co-sponsored sports programs or leagues.

6. “Volunteer” shall mean any person involved with a Borough of Manville sponsored or co-sponsored sports program or league who has regular unsupervised direct access to minors as a result of their involvement with the organization.

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

8. “Unsupervised” shall mean not supervised or under constant observation.

9. “Review committee” or “committee” shall mean a three-member Committee consisting of the Director of Recreation, Borough Business Administrator and the Chief of Police. The Committee shall be charged with the review of all appeals by any employee or volunteer whose criminal history background check reveals a disqualifying criminal conviction.

SECTION II. REQUESTS FOR CRIMINAL BACKGROUND CHECKS; COSTS

1. The Borough of Manville requires that all non-profit youth serving organizations request through the Borough of Manville Police Department that the State Bureau of Identification in the Division of State Police conduct a criminal history record background check on each prospective and current employee or volunteer of the youth serving organization. There shall be a thirty (30) day grace period for each new employee or volunteer of the youth serving organization to make application for this criminal history record background check. All coaches must have their fingerprinting and applications completed by the end of the thirty (30) day grace period.

2. The Borough shall conduct a criminal history record background check only upon receipt of the written consent for the check from the prospective or current person with direct unsupervised access to minors.

3. The employee or volunteer shall bear the costs associated with conducting a criminal history background check in accordance with the fees established by the State Bureau of Identification In the Division of State Police and in accordance with N.J.S.A. 15A:3A-2(d); provided, however, the Borough may determine to pay the cost for certain classes of employees and/or volunteers in various instances if sufficient funding is available.

4. The Division of State Police shall inform the Borough of Manville Police Department whether the person’s criminal history record background check reveals a

conviction of a disqualifying crime or offense specified in Section III of this Ordinance. Any information received by the Borough of Manville Police Department shall be confidential.

5. 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.

SECTION III. CONDITIONS UNDER WHICH A PERSON IS DISQUALIFIED FROM SERVICE.

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

(a) In New Jersey, any crime or disorderly persons offense.

(i) 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., 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;

(ii) 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;

(iii) Involving theft as set forth in Chapter 20 of Title 2C of the New Jersey Statutes;

(iv) 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.

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.

SECTION IV. SUBMISSION, EXCHANGE OF BACKGROUND INFORMATION

1. Prospective or current employees or volunteers of non-profit youth serving organizations shall submit their names, 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 Police Department through the Chief of Police who shall coordinate the background check and refer the information to

the State Police and FBI for the initial check. Thereafter, all subsequent background checks shall be submitted to the Borough of Manville Chief of Police, who shall coordinate a background check every three (3) years after the date of the initial check.

2. The Borough of Manville Police Department shall act as a clearing house for the collection and dissemination of information obtained as a result of conducting criminal history record background checks pursuant to this Ordinance.

SECTION V. LIMITATIONS ON ACCESS AND USE OF CRIMINAL HISTORY RECORD INFORMATION

1. Access to criminal history record information for non-criminal justice purposes, including licensing and employment, is restricted to the members of the Review Committee, as Code, Local Ordinance or Resolution regarding obtaining and disseminating of criminal history record information obtained under this Ordinance.

2. The Review Committee shall limit their use of criminal history record information solely to the authorized person 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. Any person violating Federal or State Regulations governing access to criminal history record information may be subject to criminal and/or civil penalties.

SECTION VI. CHALLENGE OF ACCURACY OF REPORT

1. If a criminal history record may disqualify an employee or volunteer for any purpose, the Review Committee's determination shall be provided to the employee or volunteer with an opportunity to complete and challenge the accuracy of the information contained in the criminal history record. The employee or volunteer shall be afforded a reasonable period of time to correct and complete this record. A person is not presumed guilty of any charges or arrests for which there are no final dispositions indicated on the record. The New Jersey State Police shall make the initial recommendation, based solely on the New Jersey State Statutes, to the Police Department who shall provide the information to the Review Committee. They shall advise the Review Committee whether or not the volunteer is being recommended. The Review Committee will receive a pre-printed form on each individual submitted to the State Police for a background check. One form will be for recommendation, and the other will be for rejection. If there is a rejection, the Review Committee may still allow the employee or volunteer to participate. The New Jersey State Police will make a recommendation based on the record only. It is within the Review Committee's discretion to overturn the decision of the New Jersey State Police recommendation.

2. The Review Committee shall promptly notify a prospective or current employee or volunteer whose criminal history background check reveals a disqualifying

conviction. The person shall have thirty (30) days from the receipt of that notice to petition the Review Committee for a review and cite reasons substantiating the review.

3. Notwithstanding the provision of Section III of this Ordinance, no person shall be disqualified from serving as an employee or volunteer of a non-profit youth serving organization on the basis of any conviction disclosed by a criminal history record background check, if the person can affirmatively demonstrate rehabilitation to the Review Committee. In determining whether a person has affirmatively demonstrated rehabilitation, the Review Committee shall consider the following factors:

(a) The nature and responsibility of the position which the convicted person would hold or has held, as the case may be;

(b) The nature and seriousness of the offense;

(c) The circumstances under which the offense occurred;

(d) The date of the offense;

(e) The age of the person when the offense was committed;

(f) Whether the offense was an isolated or repeated incident;

(g) Any social conditions which may have contributed to the offense;
and

(h) Any 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.

4. The Review Committee shall promptly advise the 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.

5. This section shall not apply to persons who have 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. 2C:13-1; 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.

6. When the Review Committee receives written notification from the Police Department stating whether the criminal history record background check of a current or prospective employee or volunteer perform pursuant to the provision of N.J.S.A. 15A:3A-4 reveals a disqualifying offense or stating that the person has affirmatively demonstrated rehabilitation under this act, the organization or Review Commission may file that written notification with the Police Department.

7. The Police Department shall keep the written notification on file for three (3) years from the date it was issued.

8. The Review Commission may request the 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 employee or volunteer revealed a disqualifying offense or stating that the person has affirmatively demonstrated rehabilitation under this act. A current employee or 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.

9. No person or entity shall be held liable in any civil or criminal action brought by any party based on any written notification on file with the Police Department pursuant to the provisions of this ordinance.

SECTION VII. CONSTRUCTION

Where consistent with the context in which used in this ordinance, words importing the singular shall include the plural; words importing the plural shall include the singular; and, words importing one gender shall include all other genders.

SECTION VIII. INCONSISTENCY

Should any provision of this ordinance be inconsistent with the provisions of any prior ordinances, the inconsistent provisions of said prior ordinances are hereby repealed, but only to the extent of such inconsistencies.

SECTION IX. SEVERABILITY

In the event that any provision of this ordinance, or the application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other provision or application of this ordinance which may be given effect, and, to realize this intent, the provisions and applications of this ordinance are declared to be severable.

SECTION X. PURPOSE OF CAPTIONS

Captions contained in this ordinance have been inserted only for the purpose

of facilitating reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

SECTION XI. PENALTY

Failure to comply with this Ordinance may result in the Borough withholding funding for the program or league, prohibiting the use of facilities, and/or prohibiting the use of facility maintenance.

SECTION XII. EFFECTIVE DATE

This ordinance shall be effective immediately upon final adoption, approval, and publication in accordance with law.

Statement of Purpose

This Ordinance authorizes criminal history background checks of all persons with unsupervised direct access to minors participating in any Borough sponsored, or co-sponsored program in connection with the Manville Recreation Commission.

Borough of Manville

Angelo Corradino, Mayor

ATTEST:

Philip E. Petrone, Borough Clerk

ORDINANCE #2005-1005

FIRST READING:

Introduced	Seconded	Council	Yes	No	Abstain	Absent
		ALLAN	X			
X		ASHER	X			
		OTRIMSKI				X
		PETROCK				X
		PETRONE				X
	X	WEISS	X			
		MAYOR CORRADINO				

PASSED this **9th** day of **May** , 2005.

Attest:

Philip E. Petrone, Borough Clerk

SECOND READING:

Introduced	Seconded	Council	Yes	No	Abstain	Absent
	X	ALLAN	X			
		ASHER	X			
		OTRIMSKI				X
X		PETROCK	X			
		PETRONE	X			
		WEISS	X			
		MAYOR CORRADINO				

ADOPTED this **23rd** day of **May** , 2005.

Attest:

Philip E. Petrone, Clerk