

**TOWNSHIP OF EDGEWATER PARK
ORDINANCE 2009-3**

**AN ORDINANCE SUPPLEMENTING THE GENERAL ORDINANCES
OF THE TOWNSHIP OF EDGEWATER PARK, COUNTY OF BURLINGTON,
CHAPTER 12, STREETS, SIDEWALKS AND PUBLIC PLACES BY ADDING A
REQUIREMENT FOR CRIMINAL HISTORY BACKGROUND CHECKS FOR
RECREATION EMPLOYEES & VOLUNTEERS**

WHEREAS, the Township Committee of the Township of Edgewater Park wishes to ensure that the Township is providing the safest possible recreation programs for its youth; and

WHEREAS, *N.J.S.A. 15A:3A-1* permits non-profit youth-serving organizations to request the State Police to perform a criminal background check on current and prospective employees or volunteers, in order to check the criminal histories of those employees or volunteers who have direct contact with minors, in order to eliminate those with convictions for certain crimes and disqualify prospective employees and volunteers who have been convicted of certain offenses; and,

WHEREAS, the Edgewater Park Township Committee has recommended that all employees and volunteers of programs sponsored by Edgewater Park Township, or co-sponsored by Edgewater Park Township in connection with the Recreation Department, the Edgewater Park Athletic Association or any other organization serving youth organizations, who have regular, supervised or unsupervised access to minors involved in such programs, be required to submit to criminal history background checks at their own expense; and

WHEREAS, the Township would like all youth programs using township facilities, and all programs that are funded or supported by the Township, in whole or in part (including but not limited to baseball, softball, soccer, football, basketball, etc.) be required to perform criminal background checks as a condition of using township facilities.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Edgewater Park, County of Burlington, as follows:

§ 12 Streets, Sidewalks and Public Places Revised General Ordinances of the Township of Edgewater Park, is supplemented as follows:

§ 12.40 Criminal History Background Checks of Employees and Volunteers Involved in Recreation Programs.

§ 12.40.010 Definition

As used in this chapter, 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 NJ State Bureau of

Identification in the Division of State Police.

“Non-Sponsored Youth Programs” – Any youth programs not sponsored by the Township of Edgewater Park, but that utilize municipal facilities or have affiliation with a Township Sponsored Youth Program and having contact with persons under the age of 18 years.

“Township-Sponsored Youth Programs” - Any programs sponsored by the Township of Edgewater Park, including any township employees, volunteer organizations created by the township, and all leagues, boards, committees and commissions falling within the purview of or acting for or on behalf of the Township of Edgewater Park and having contact with persons under the age of 18 years.

“Youth Programs” – Any programs that allow for participation in activities by those persons under 18 years of age. Activities may include, but are not limited to, sporting 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 the Township other than a parent or caregiver.

§ 12.40.020 Non-Sponsored Youth Programs - Criminal background checks - Required for use of Edgewater Park Township facilities.

Prior to any club or organization, not defined as a Township-sponsored youth program, being authorized to use Township-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 provide the Edgewater Park Chief of Police or designee with findings of a criminal background check obtained from the State Bureau of Identification in the New Jersey State Police.

The submission of background check findings must be based upon a check performed within three (3) years of the start of use of the Township owned facility. In the case of coaches performing duties as employees of a school district, the policy of background checks adopted by the individual school district shall be used to establish eligibility for use of Township owned facilities. In all cases the background check must comply with the provisions of any applicable laws regarding same, but not less detailed than those performed by the Township for individuals involved in administering Township Sponsored Youth Programs. The Township of Edgewater Park recognizes the Edgewater Park Athletic Association (EPAA) as the largest non-sponsored youth program within the Township of Edgewater; therefore the cost of the initial background checks due for individuals associated with and recognized by the EPAA shall be borne by the Township of Edgewater Park within the first year of the effective date of the Ordinance. Thereafter all fees for individuals not administering a Township-Sponsored program shall be borne by the individual or program with which they are participating.

§ 12.40.030 Township Sponsored Youth Programs - Background checks.

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 Edgewater Park Township sponsored function participated in by children,

shall submit sufficient information on forms supplied by the Edgewater Park Township Police Department 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 Edgewater Park Township Chief of Police or designee.

Based upon the Memorandum of Understanding executed between the Township of Edgewater Park and the New Jersey State Police, the individual applying for the background check shall authorize the Edgewater Park Township Chief of Police to be the recipient of the affirmative or negative response from the State Police based upon the findings of the background check. Individuals involved in a Edgewater Park Township sponsored youth function, and who are required to undergo background checks based upon this chapter, shall not be responsible for the costs involved with obtaining the criminal background check. The Township of Edgewater Park shall bear the costs for the background checks for individuals qualified under this section.

B. All league officers and/or those individuals in charge of each recreation program are required to ensure compliance with this chapter for that league or program. The President or leader of each recreation program shall file an annual roster of individuals that are required to participate in the background check procedures of this chapter. The roster shall be on forms supplied by the Township of Edgewater Park and shall contain a certification as to the accuracy and completeness of the roster and individual names. Any person who knowingly certifies a background check roster that excludes an individual required to be checked shall be in violation of this chapter and laws regarding false swearing.

§ 12.40.040 Qualification.

A. Individuals engaged in providing recreation opportunities for, or on behalf of, the Township of Edgewater Park shall be issued identification cards with appropriate expirations based upon the date of their individual background check. Individuals issued identification cards are required to display their card while in performance of their duty involving youth programs.

§ 12.40.050 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 Edgewater Park Township Chief of Police or designee shall notify the applicant and the President or leader of the recreation program of affirmative or negative results. The determination of the Edgewater Park Township Chief of Police is based upon section 12.40.050 B.1 of this chapter. Details in the background check that result in a negative determination by the State Police are not afforded to the 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 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. 2C:11-1 et seq., N.J.S. 2C:12-1 et seq., N.J.S. 2C:13-1 et seq., N.J.S. 2C:14-1 et seq. or N.J.S. 2C:15-1 et seq.;

(b) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S. 2C:24-1 et seq.;

(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. 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 subsection B 1. of 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 Township-sponsored activities requiring background checks. In addition, refusal to comply with this chapter 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-Township Sponsored Youth Program to subscribe to the requirements of this chapter shall forfeit that program's ability to use municipal facilities.

§ 12.40.060 Frequency of background checks.

A. All Non-Sponsored Youth Programs that have individuals subject to this chapter shall supply background checks for all of its participants prior to the individual being able to participate at any function at a Township-owned facility to the extent covered by this chapter. Thereafter, every three (3) years a new background check shall be submitted to the Chief of Police or designee.

B. 1. All Township Sponsored Youth Programs that have individuals subject to this chapter 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 Township of Edgewater Park. Thereafter, every three (3) years a new background check shall be submitted to the Chief of Police.

2. Individuals involved in Township 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 checks 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.

§ 12.40.070 Privacy

Any and all criminal background checks supplied to the Chief of Police or designee 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 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.

§ 12.40.080 Appeals

A. Any person whose criminal history background check disqualifies that person from employment or from volunteering, may appeal his or her disqualification.

1. A person may challenge the accuracy of the criminal history record;
2. A person may claim to be rehabilitated;
3. 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 rejected 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. 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

B. A challenge to the accuracy of the report shall be filed with the Edgewater Park Township Chief of Police, who shall coordinate the challenge with the New Jersey State Police.

C. An appeal based on rehabilitation shall be made to an Appeals Committee, which shall consist of the Edgewater Park Township Chief of Police, Township Administrator and Township Solicitor. Any such appeal must be made within thirty (30) days of receipt of the notice of disqualification.

D. In determining whether a person has affirmatively demonstrated rehabilitation, the Appeals Committee 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 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. 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.

E. 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 Chief of Police or designee.

§ 12.40.090 Penalties

A. Failure to comply with this Ordinance may result in the township withholding funding for the non-profit 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 be subject to the following fines:

1. A fine of not less than two hundred fifty dollars (\$250.00) and not more than one thousand five hundred dollars (\$1,500.00);
2. Each continuing violation of this chapter shall constitute a separate offense.

C. In the event that any portion of this Ordinance is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall be limited in its effect only to that

portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable there from and shall not be affected.

§ 12.40.100 Effective Date

This ordinance shall take effect immediately upon the approval and publication of notice of adoption as provided by law.

§ 12.40.110 Ordinance Provisions Repealed

Any ordinance provisions inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistency.

§ 12.40.120 Severability

If the provisions of any section, subsection, paragraph, subdivision, or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

NOTICE

The foregoing was introduced by the Edgewater Park Township Committee at its meeting held on February 3, 2009. This ordinance will be consider for adoption of final reading and public hearing to be held on February 17, 2009 at 7:00 PM, or shortly thereafter, and place to which such meeting may be adjourned, in the Municipal Building, 400 Delanco Road, Edgewater Park, New Jersey. At which time and place all persons interested will be given an opportunity to be heard concerning said Ordinance. During the week prior to and up to and including the date of such meeting, copies of said ordinance will be made available at the Clerk's office to the members of the general public who shall request the same.

NOTICE OF FINAL ADOPTION:

Notice is hereby given that the foregoing ordinance was approved for final adoption by the Township Committee of the Township of Edgewater Park at a Regular Meeting held on Tuesday, February 17, 2009 at the Municipal Building, 400 Delanco Road.