

**BOROUGH OF EMERSON**

**COUNTY OF BERGEN, NJ**

**NOTICE OF ADOPTION**

**ORDINANCE NO. 1415-10**

Introduced: September 7, 2010

Adopted: September 21, 2010

**NOTICE IS HEREBY GIVEN** that the following ordinance was adopted on the second reading after a Public Hearing at the Regular Meeting of the Borough Council of the Borough of Emerson on the 21<sup>ST</sup> day of September, 2010. A copy of Ordinance 1415-10 is on file in the Borough Clerk's Office in the Municipal Building, 1 Municipal Pl., Emerson, NJ 07630.

**AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF EMERSON CHAPTER 61 ENTITLED PARKS, PLAYGROUNDS AND RECREATION, DEPARTMENT OF TO ADD A SECTION REGULATING BACKGROUND CHECKS FOR VOLUNTEERS THAT PARTICIPATE IN BOROUGH-SPONSORED YOUTH SPORTS PROGRAMS**

BE IT ORDAINED by the Council of the Borough of Emerson as follows:

**Section I.** Chapter 61 of the Code of Emerson is hereby amended to add a new section following § 61-8, to be known as : §61-9 Mandatory Back ground Checks

**61-9. Mandatory Background checks; purpose**

The purpose of this section is to provide a procedure for screening individuals for criminal activity prior to their contact and participation in borough-sponsored recreation programs.

**61-10 Definitions, words usage**

A. As used in this chapter, the following terms shall have the meanings indicated:

**BOROUGH-SPONSORED YOUTH PROGRAMS** - Any programs sponsored by the Borough of Emerson, including any and all sports leagues, boards and commissions, within the purview of or acting for or on behalf of, the Borough of Emerson and having contact with persons under the age of 18 years.

**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.

**TITLES** – All positions, unless otherwise noted, shall refer to the Emerson Police Chief, Emerson Borough Administrator and Emerson Recreation Commission. Should the Police Chief's position ever become vacant during the background check process, the next highest ranking Emerson police officer shall be designated in his/her place.

**61-11. 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 Borough-sponsored function participated in by children, shall submit sufficient information on forms supplied by the Police Chief, in conjunction with the Recreation Commission, for the purpose of obtaining a criminal history background check with the State Bureau of Identification in the New Jersey State Police. Outside businesses may be excluded under the discretion of the Police Chief upon consultation with the Borough Administrator and Recreation Commission.
- B. The individual applying for the background check shall authorize the Police Chief 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 borough-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 Borough of Emerson shall bear the costs for background checks for individuals qualified under this section.
- C. 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 Commission 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 Borough of Emerson 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.

## **61-12. Qualification.**

- A. Individuals engaged in providing recreation programs for, or on behalf of, the Borough of Emerson shall be on record with a designated Recreation Commission official with appropriate expiration dates based upon their individual background check.

## **61-13 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 Police Chief shall notify the Borough Administrator who shall then notify the applicant and the Recreation Commission Chairperson of affirmative or negative results. The determination of the Police Chief is based upon section 65A-5.B of this chapter. Details in the background check that result in a negative determination by the State Police are not afforded to the Borough Administrator nor the Recreation Commission, 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 Borough-owned facilities. Such offenses shall include, but not be limited to:
- a. In New Jersey, any crime or disorderly persons offense:
- (1) 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.;
  - (2) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S. 2C:24-1 et seq.;
  - (3) involving theft as set forth in Chapter 20 of Title 2C of the New Jersey Statutes;
  - (4) 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.
- b. 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 a. 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 Borough-sponsored activities requiring background checks. In addition, refusal to comply with this chapter by any individual falling within the scope of requirements will forfeit that individual's ability to participate with the respective program.

**61-14. Frequency of background checks.**

All borough-sponsored programs that have individuals subject to this chapter shall be directed by the Recreation Commission for background checks prior to the individual being able to participate at any function sponsored by the Borough of Emerson. Thereafter, every three (3) years a new background check shall be undertaken in accordance with the guidelines set forth in this ordinance. If a valid background check has already been conducted on an individual, proof of that check shall be submitted to the Police Chief. Upon discovery, information or knowledge that an individual whose background check was determined to be negative and is still valid within the 3 year time period but who may now be in violation of §65A-4., B, C & D, the Police Chief shall examine and evaluate the information provided on a case by case basis and proceed, if necessary, with §65A-2 as provided by this ordinance.

**61-15. Appeals.**

If a criminal record background check results in a determination that a person should be disqualified from participating in a Recreation Commission activity, said person may appeal the determination by filing a written notice of appeal with the Borough Administrator no later than thirty (30) days after receiving notice of the disqualification from the Borough Administrator. A person filing an appeal shall be afforded an adequate opportunity to confirm or deny any information contained in the criminal history record and a reasonable period of time to correct or complete the record prior to any final determination or decision concerning the person's eligibility for any position.

The Appeal Panel shall hear any appeal within 30 days after the filing of the written notice of appeal. The Appeal Panel shall conduct a hearing, upon the request of said person, and render a final determination as to whether the person should be disqualified. The Mayor and Council shall be notified of the final determination of the appeal.

The Appeals Committee shall consist of the Borough Administrator, Police Chief and an officer of the Emerson Police Department appointed by the Police Chief.

**61-16. Privacy.**

All background checks shall be reported to the Police Chief who will then supply the denial or approval to the Borough Administrator. Any and all criminal background checks supplied to the Emerson Police Department shall be filed and maintained in a secure and locked cabinet or room and shall not be available to the public. The Police Chief shall take appropriate steps to safeguard such records. The records shall be exempt from public disclosure under OPRA or New Jersey Right to Know.

The records shall only be retained for such period of time as is necessary to serve their intended and authorized purpose.

**Section II: Effective Date**

This ordinance shall take effect immediately upon the approval and publication of notice of adoption as provided by law. All initial background checks shall be concluded within 90 days of passage of this ordinance.

**Section III: Ordinance Provisions Repealed**

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

**Section IV: Penalties**

Penalties for non-compliance with this ordinance shall be determined by the Borough Administrator, in conjunction with the Recreation Commission, and may include but not be limited to prohibition from use of borough fields and elimination of borough funding.

**Section V: 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.

**ATTEST:**

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Carol Dray, RMC/CMC/CMR  
Borough Clerk

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Louis J. Lamatina  
Mayor