

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 93
("CRIMINAL HISTORY BACKGROUND CHECKS") OF THE MANALAPAN
TOWNSHIP CODE
Ordinance No. 2008-02**

Adopted February 27, 2008

WHEREAS, the Township of Manalapan is a Municipal Corporation of the State of New Jersey; and

WHEREAS, the Township has previously adopted a Code Book containing the various ordinances governing the operation and regulations of the Township; and

WHEREAS, Chapter 93 of the same permits the Township to require criminal background checks for the various employees and/or volunteers associated with the Youth Programs sponsored by, associated with, and/or affiliated with the Township; and

WHEREAS, such a regulation promotes the health, safety, and welfare of all participants in the various Youth Programs; and

WHEREAS, the Superintendent of the Township's Parks and Recreation Department has suggested some general revisions to the said Ordinance; and

WHEREAS, the Township Committee is of the belief that the suggested revisions will better protect and promote the interests of the citizens and children of the Township; and

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED, by the Township Committee of the Township of Manalapan, County of Monmouth, and State of New Jersey as follows:

1. That Chapter 93 ("Criminal History Background Checks") is hereby modified as follows:

§ 93-01. Definitions.

Deleted: NOTE: Additions are set forth in underlining and ¶ deletions are denoted in ~~strikeout~~

For purposes of this Chapter, the following terms shall have the meanings indicated:

COSPONSORED PROGRAM– means any program, including but not limited to Nonprofit Youth Serving Organizations as defined below, which receives benefits, either directly or indirectly, including, but not limited to, the provision of funding and/or the provision of fields, facilities, and/or equipment (and including the maintenance of same), from the Township of Manalapan, and/or any agent of the Township of Manalapan.

CRIMINAL HISTORY BACKGROUND CHECK– means a review and determination as to whether a person has any prior criminal record by cross-referencing that person’s name and fingerprints with those on file with the Federal Bureau of Investigation, Identification Division, the State Bureau of Identification in the Division of State Police, the Manalapan Township Police Department, and/or any division/agency of the referenced entities.

EMPLOYEE– means an individual eighteen years of age or older who receives compensation from the Township, from a private entity, or from a nonprofit entity, monetary or otherwise, which compensation results from his or her involvement with or employment by a nonprofit youth service organization or Manalapan Youth Program as defined below.

MANALAPAN YOUTH PROGRAM– means any program offering recreational, cultural, charitable, social and/or other activities or services for persons younger than eighteen (18) years of age, including but not limited to sports leagues, which are funded and/or administered, and/or assisted in whole or in part, by the Township of Manalapan.

NONPROFIT YOUTH SERVING ORGANIZATION– means an organization defined in N.J.S.A. 15A:3A-1, as a corporation, association or other organization established pursuant to Title 15 of the Revised Statutes, Title 15A of New Jersey Statutes, or other law of this State, but excluding public and nonpublic schools, and which provides recreational, cultural, charitable, social or other activities or services for persons younger than 18 years of age, and which is exempt from federal income taxes.

QUALIFIED PARTICIPANT - means an Employee or Volunteer who has completed a Criminal History Background Check revealing no disqualifying convictions.

REVIEW COMMITTEE– means a committee consisting of the Township Administrator, the Township Attorney, the Superintendent of Manalapan Township Parks and Recreation Department, and the Police Chief. It shall be charged with the review of all appeals filed by any employee or volunteer who is disqualified from service in a program resulting from a Criminal History Background Check.

UNSUPERVISED DIRECT ACCESS TO MINORS– means the ability to have interaction with a person or persons who are younger than eighteen (18) years of age without the constant observation of the parent(s) or guardian(s) of the youth(s) or without the constant observation of a representative of law enforcement or a supervising Qualified Participant.

VOLUNTEER— means any individual eighteen years of age or older who does not receive compensation from the Township, from a private entity, or from a nonprofit entity, monetary or otherwise resulting from his or her involvement with or employment by a Nonprofit Youth Service Organization or Manalapan Youth Program, but who still involves himself or herself with such program and provides his or her services without such compensation.

CRIMINAL HISTORY BACKGROUND CHECK (“CHBC”) COORDINATOR - means the person designated by a Nonprofit Youth Servicing Organization or Manalapan Youth Program to be the contact person for CHBC matters.

§93-02. Request for Criminal Background Checks; Costs.

A. The Township requires that all Nonprofit Youth Serving Organizations involved in Cosponsored Programs or Manalapan Youth Programs, request through the Superintendent of the Manalapan Township Parks and Recreation Department that the State Bureau of Identification in the Division of State Police (or other appropriate policing / investigating agency) conduct a Criminal History Background Check on each prospective and current Employee and/or Volunteer of the organization who will have Unsupervised Direct Access to Minors.

B. No prospective Employee or Volunteer who will have Unsupervised Direct Access to Minors will be permitted to commence service prior to the completion of the Criminal History Background Check process, except as set forth in Subsection C below.

C. Unless good cause exists as reasonably determined by the Chief of Police, a prospective Employee or Volunteer who has requested the necessary Criminal History Background Check through the Superintendent of the Manalapan Township Parks and Recreation Department and who has been fingerprinted, may commence services under the direct supervision of a Qualified Participant pending the results of the Criminal History Background Check.

D. An Employee or Volunteer required by this Ordinance to undergo a Criminal History Background Check who refuses to consent to this procedure shall not participate in any Nonprofit Youth Serving Organization or Manalapan Youth Program.

E. The costs associated with the fingerprinting process shall be paid directly by the Employee or Volunteer. Reimbursement, if any, for the affected Employee or Volunteer shall be determined by the policy of the affected nonprofit Youth Serving Organization or Manalapan Youth Program. All such costs shall be as set forth in N.J.S.A. 15A:3A-2d, which requires the Attorney General to determine the actual costs for the procedure.

F. The Superintendent of the Manalapan Township Parks and Recreation Department shall set forth policies and procedures to implement the within Ordinance, which policies and procedures shall not be inconsistent with the terms of the within Ordinance.

§93-03. Submission of information for Criminal History Background Checks.

A. Any Nonprofit Youth Serving Organization or Manalapan Youth Program seeking to employ or engage an Employee or Volunteer required to undergo a Criminal History Background Check pursuant to the within Chapter shall appoint a CHBC Coordinator prior to the commencement of each season. The CHBC Coordinator shall submit a list of such Employees and Volunteers currently serving the organization and a list of all prospective Employees and Volunteers to the Superintendent of the Manalapan Township Parks and Recreation Department.

B. All Employees and Volunteers included on the aforementioned lists shall submit their name, address, date of birth, written consent and any other data deemed necessary by the Manalapan Police Chief to the Superintendent of the Manalapan Township Parks and Recreation Department. Fingerprints will be taken by a Company designated by the New Jersey State Police, or agency/division thereof subsequent to submission of the aforementioned information. The Manalapan Police Chief or his/her designee shall coordinate the Criminal History Background Check.

C. The Manalapan Police Chief is hereby authorized to exchange fingerprints and all other pertinent record information submitted by the Employee or Volunteer with, and to receive criminal history record information from, the Federal Bureau of Investigation, Identification Section, the Division of State Police, Bureau of Identification, and such other law enforcement agencies and jurisdictions as may be necessary for the purposes of the within Section.

D. The Superintendent of the Manalapan Township Parks and Recreation Department shall act as a clearinghouse for the collection and dissemination of non-confidential information obtained as a result of conducting Criminal History Background Checks pursuant to the within Section, while the Manalapan Police Chief will maintain all confidential information.

§93.04. Continuing Obligation.

A. Notwithstanding prior compliance with the within Ordinance, no individual shall be permitted to continue as an Employee or Volunteer in any capacity where the individual may have Unsupervised Direct Access to Minors unless the latest Criminal History Background Check on file with the Manalapan Township Parks and Recreation Department was performed within the prior four (4) year period.

B. The Manalapan Township Parks and Recreation Department shall issue a photo ID card to all volunteers/employees who successfully complete the CHBC process. The volunteer/employee is required to visibly display his or her photo ID card at all games, practices, and other official events.

§ 93.05. Disqualification from service.

A. A person shall be disqualified from serving as an Employee or Volunteer in any capacity where the individual may have Unsupervised Direct Access to Minors if that person's Criminal History Background Check reveals a record of conviction of any crime or disorderly offense:

1. Involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.A. 2C:11-1, *et seq.* (criminal homicide), N.J.S.A. 2C:12-1, *et seq.* (assault; reckless 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), or N.J.S.A. 2C:15-1, *et seq.* (robbery); or
2. 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.*, or
3. Involving theft as set forth in Chapter 20 of Title 2C of the New Jersey Statutes; or
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 for N.J.S.A. 2C:35-10(a)(4) (minimal amounts of marijuana or hashish).
5. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly person's offenses described herein.

B. In the event a charge is pending against a person, that person shall be temporarily disqualified from service pending the resolution of that charge. If such charge(s) results in a conviction of a crime or disorderly person's offense described herein which would disqualify the person from service, such person shall be deemed disqualified as of the date of conviction.

C. If a pending charge is for an offense which would serve to disqualify the person from service upon conviction, the person shall report the pending charge on the earliest of his/her submission to the Criminal History Background Check or the date he/she learns of the charge. The individual shall also report the disposition of the charge immediately upon receiving notice of the said disposition.

D. In the event the State Police Report (or any other police/investigative report) indicates there may have been an offense by the potential Employee or Volunteer which the State Police have been unable to confirm, or for which they are unable to obtain records, the potential Employee or Volunteer shall not be disqualified immediately but will be permitted to appear before the Review Committee to present evidence regarding the alleged offense and/or affected employee volunteer. In the event sufficient information is presented, the Review Committee shall review the matter in accordance with the Hearing Process set forth below.

§ 93.06. Results; Determination of Disqualification.

If, following the completion of the Criminal History Background Check and receipt of the results from the New Jersey State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation, (and/or any other policing report) a disqualifying conviction exists as set forth in this Ordinance, then the Manalapan Police Chief or his/her designee shall notify the Employee or Volunteer in writing, via certified and regular mail, of that person's disqualification to serve with the specified organization in any capacity where that person may have unsupervised direct access to minors. The written notice shall not divulge any information regarding the nature of the conviction(s); rather, the written notice shall simply state that the Employee or Volunteer is disqualified pursuant to the within Section. The written notice shall also state that the individual may appeal the determination by filing a written notice of appeal in accordance with the requirements of Section §93-08 below. A copy of the said notice shall in all circumstances, (including Nonprofit Youth Serving Organizations), be sent to the Superintendent of the Manalapan Township Parks and Recreation Department.

The Manalapan Police Chief shall be authorized to conduct any additional investigation which in his/her discretion he/she deems appropriate to obtain accurate information.

§ 93.07. Disqualification Appeals Process.

A. Grounds for Appeal. Any current or prospective Employee or Volunteer who is disqualified in accordance with this Ordinance may appeal that determination for good cause shown. Good cause shall include, but is not limited to, the following:

1. the background check produced inaccurate or incomplete information;
2. the age of the individual at the time of the offense or crime or conviction;
3. the nature and circumstances underlying the conviction indicate that the individual does not presently pose a threat;
4. the conviction arose out of an isolated incident;
5. the conviction(s) and underlying incident(s) are not relevant to the position sought;
6. since the conviction, the individual has taken significant steps towards rehabilitation, including but not limited to counseling, treatment, schooling, vocational training, and successful completion of a court-ordered program; and
7. an individual with supervisory responsibilities over the appealing party gives a recommendation on his or her behalf.

B. Notice of appeal. Any current or prospective Employee or Volunteer may file an appeal from an initial determination under the within Ordinance by filing a written notice of appeal

with the Superintendent of the Manalapan Township Parks and Recreation Department within ten (10) days of his or her receipt of the written notice of disqualification from the Manalapan Police Chief (or his/her designee).

C. Notice of Hearing. Within ten (10) days of the filing of a written notice of appeal, the Review Committee shall send a written notice to the applicant via certified and regular mail providing a hearing date no later than twenty (20) days from the filing of the notice of appeal. The Review Committee's letter shall inform the individual that he or she has the right to be represented by counsel and that he or she may call witnesses and present documentation on his or her behalf. The letter shall further explain that the individual shall, on or prior to the date of the hearing, provide the Review Committee with all documentation, including but not limited to police reports and court dispositions, relating to the subject conviction(s). The letter shall further state that the Review Committee's decision may be rendered faster following the hearing if the individual provides said documentation prior to the hearing date.

D. Hearing. The hearing before the Review Committee shall be closed to the general public. It shall be attended only by the members of the Review Committee, the appealing individual, his or her attorney if so retained, and any witnesses who desire to speak on behalf of the appealing individual, which witnesses will be present only for the period of their own testimony. During the course of the hearing, the appealing individual shall be given the opportunity to read a prepared statement, to speak freely, and/or to present witnesses and/or documentation on his or her behalf.

E. Determination. Immediately following the hearing, or at a time no later than ten (10) days following the hearing, the Review Committee shall meet to discuss the appeal. Factors including but not limited to the following shall be considered as appropriate:

1. the age of the individual at the time of the offense and conviction;
2. the nature and seriousness of the offense;
3. the harm to individuals and/or society arising out of the incident(s) underlying the conviction(s);
4. the date of the conviction;
5. whether the individual demonstrates that he or she has been rehabilitated;
6. the input of others with supervisory roles over the appealing individual;
7. the candor of the appealing individual;
8. whether the offense was an isolated incident or part of a pattern of behavior;
9. whether the individual is suited for Unsupervised Direct Access to Minors.

§ 93.08. Disqualification from Service.

A. In the event an individual is notified of his or her disqualification and does not appeal in accordance with the requirements of §93.08, the Superintendent of the Manalapan Township Parks and Recreation Department shall send a copy of the notification of disqualification via regular mail with a courtesy copy sent via regular mail to the CHBC Coordinator of the Nonprofit Youth Serving Organization or Manalapan Youth Program in which the Employee or Volunteer serves or wishes to serve, of that person's disqualification to serve with that organization in any capacity where that person may have Unsupervised Direct Access to Minors.

B. In the event of a duly filed appeal in accordance with §93.08 which results in a reversal of the Determination, no further notice will be sent to anyone other than the appealing individual.

C. In the event the appeal does not result in a reversal, then, within ten (10) days of the decision by the Review Committee, the Superintendent of the Manalapan Township Parks and Recreation Department (or his/her designee) shall notify the appealing individual of the decision, via regular mail. Notice of the Disqualification shall also be provided (via regular mail) to the CHBC Coordinator of the Nonprofit Youth Serving Organization or Manalapan Youth Program in which the Employee or Volunteer serves or wishes to serve.

§ 93.09. Limitations on Access and Use of Criminal History Background Check Information.

A. The Manalapan Police Chief and other police personnel shall limit their use of the Criminal History Background Check information obtained as a result of the requested search to the making of the determination pursuant to the within Ordinance.

B. Should an appeal follow, the Manalapan Police Chief is authorized to provide the results of the search to the Review Committee. The Review Committee shall limit its use of the information to the appeal process pursuant to §93.08. Following the appeal process, the subject records shall be returned to the Manalapan Township Police Department where they shall be sealed, dated, and destroyed one year after sealing, unless the Manalapan Township Police Department is advised of judicial action involving the information and/or determinations made under this Ordinance. If no appeal follows the initial disqualification determination, then the records shall remain with the Manalapan Township Police Department where they shall be sealed, dated, and destroyed one year after sealing, unless the Manalapan Township Police Department is advised of judicial action involving the information and/or determinations made under this Ordinance.

C. Unless the law provides otherwise, information obtained as a result of the record search shall not be disseminated to any other individual or entity in any form, except as necessary for litigation resulting from the determinations made pursuant to this Ordinance. Any person violating Federal or State regulations governing the access to criminal history record information may be subject to criminal and/or civil penalties.

§ 93.10. Compliance; Penalties.

The Nonprofit Youth Serving Organization or Manalapan Youth Program, shall appoint an individual to the position of CHBC Coordinator as applicable, who shall be required to monitor compliance with the requirements of this Ordinance, as it relates to the submission of its Employees and Volunteers to a Criminal History Background Check. The Nonprofit Youth Serving Organization or Manalapan Youth Program, as applicable, shall not permit any of its Employees or Volunteers to have Unsupervised Direct Access to Minors until such Employees and/or Volunteers have first been cleared by the Manalapan Police Chief or Review Committee, as applicable. Failure to comply with this Ordinance may result in the Township of Manalapan withholding funding, land, equipment, and/or other services for the Nonprofit Youth Serving Organization or Manalapan Youth Program, or any of the associated activities. Additionally, in the event of a violation of the within Ordinance, the Township of Manalapan reserves the right, but not the obligation, to pursue any remedy (at law or in equity) against the affected non-profit youth service organization or Manalapan Youth Program. A violation of this Ordinance by any Nonprofit Youth Serving Organization leasing land from the Township (and/or any Agency thereof) shall also be deemed a breach of the subject lease by the affected organization.

2. That the within Ordinance shall comply with all Prevailing Provisions of New Jersey Law.

3. That all Ordinances, or parts of Ordinances, inconsistent herewith are hereby repealed.

4. That if any part of the within Ordinance is for any reason held to be invalid, such decision shall not affect the validity of any remaining portion of the Ordinance.

5. That upon adoption, a certified true copy of the within Ordinance shall be forwarded to the following:

- A. Superintendent of Township Parks and Recreation Department
- B. All known head/lead officials associated with non-profit youth service organizations/youth programs operating within the Township of Manalapan;
- C. Chief of Police;
- D. Township Attorney

6. That the within Ordinance shall become effective in accordance with
Prevailing Provisions of New Jersey Law.

I, ROSE ANN WEEDEN, Clerk of the Township of Manalapan, do hereby certify Ordinance No. 2008-02, An Ordinance Amending and Supplementing Chapter 95 (“Criminal History Background Checks”) of the Manalapan Township Code, as a true copy as adopted by the Township Committee on February 27, 2008.

ROSE ANN WEEDEN, Municipal Clerk

Introduction 02-13-08	Public Hearing Held & Closed 02-27-08	Adopted 02-27-08	Amend Background Checks
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