

ORDINANCE 2011-16 OF THE TOWNSHIP OF BERLIN, COUNTY OF CAMDEN, AND STATE OF NEW JERSEY, ESTABLISHING BACKGROUND CHECKS FOR VOLUNTEER SPORTS ORGANIZATIONS

WHEREAS, the Mayor and Township Council of the Township of Berlin, County of Camden and State of New Jersey has determined that it is essential to provide for the safety of those engaged in youth activities in the Township of Berlin (“Township”) and to provide reasonable assurance that adults responsible for the coaching and supervision of minors have been subject to a background check; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, the Township is authorized to make, amend, repeal and enforce ordinances as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law; and

WHEREAS, the Mayor and Township Council has deemed it in the best interest of the public health, safety and welfare to establish a background check procedure for all who are responsible for the supervision of minors involved in youth sports activities in the Township of Berlin.

NOW THEREFORE, be it Ordained by the Mayor and Township Council of the Township of Berlin, County of Camden, State of New Jersey, as follows:

SECTION 1: The Berlin Township Code is hereby amended by adding a new Chapter 39, as follows:

Chapter 39-Background Checks

39-1. Definitions:

As used in this article, the following terms shall have the meanings indicated:

CRIMINAL HISTORY RECORD AND FINGERPRINT 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 New Jersey State Bureau of Identification in the Division of State Police.

NON-SPONSORED YOUTH PROGRAMS – Any youth program not sponsored by the Township of Berlin, 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 Berlin, including the Berlin Township Athletic Association and any and all leagues, boards and commissions falling within the purview of or acting for or on behalf of, the Township of Berlin 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 persons under 18 years of age is assigned to some person acting for or on behalf of the Township of Berlin other than a parent or caregiver.

39-2. Non-Sponsored Youth Programs – Criminal Background Checks – Required for use of Berlin 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, shall submit sufficient information on forms supplied by the Berlin 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 check shall be processed by the Berlin Township Chief of Police. The individual applying for the background check shall authorize the Berlin 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.

The submission of background check findings must be based upon a check performed within two 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 provision 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 cost of background checks for individuals not administering a Township-Sponsored Youth Program shall be borne by the individual or program with which they are participating.

39-3. 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 Berlin Township sponsored function participated in by children, shall submit sufficient information on forms supplied by the

Berlin 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 Berlin Township Chief of Police.

The individual applying for the background check shall authorize the Berlin 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 Berlin 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 Berlin 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 through the Chief of Police to the Berlin Township Police Department Records Bureau in order to properly maintain the system. The roster shall be on forms supplied by the Township of Berlin 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.

39-4. Qualification.

Individuals engaged in providing recreation opportunities for, or on behalf of, the Township of Berlin 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.

39-5. 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 Berlin Township Chief of Police shall notify the applicant and the president or leader of the recreation program of affirmative or negative results. The determination of the State Police and/or Federal Bureau of Investigation shall be based upon section 39-5.B of this Chapter. Details in the background check that result in a negative determination shall not be disclosed to any other Township official or employee 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 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 dangerous 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.

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 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's 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. Refusals of a Non-Sponsored Youth Program to subscribe to the requirements of this Chapter shall forfeit that programs ability to use municipal facilities.

39-6. 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 two years a new background check procedure shall be required.

B. 1. All Township-Sponsored Youth Programs that have individuals subject to this Chapter shall direct those individuals to the Berlin Township Police Department for the background check submission forms which shall be processed through the Chief of Police prior to the individual being able to participate in any function sponsored by the Township of Berlin. Thereafter, every two years a new background check shall be required.

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.

39-7. Privacy.

Any and all criminal background checks obtained from the State Bureau of Identification in the New Jersey State Police or the Federal Bureau of Investigation shall be filed and maintained in a secured and locked cabinet or room at the Berlin Police Department Records Bureau in the Criminal Investigation Section which shall take custody and maintain such records which shall not be available to the public. The Berlin Township Police Department personnel in the Records Bureau shall take appropriate steps to safeguard such records. The records shall be exempt from public disclosure under the common law, the Open Public Records Act and the New Jersey Right to Know Law. In addition, the Berlin Township Chief of Police shall not reveal the affirmative or negative response from the State Police based upon the findings of the background check except as provided in this Chapter. No Berlin Township official or employee shall have access to the criminal background checks other than individuals in the Berlin Township Police Department Records Bureau, whose only access shall be to take custody and maintain the files as provided for in this section. The records shall only be retained for such period of time as is necessary to serve their intended and authorized purpose. The Berlin Township Chief of Police shall be the contact person for Berlin Township for the VRO Program of the State Police.

39-8. Penalties.

Any person violating or failing to comply with the provisions of this Ordinance, shall, upon conviction thereof, be punished by a fine of not more than \$500.00 or by imprisonment for a term not to exceed 90 ninety days, or by both, such fine and imprisonment, in the discretion of the Judge

SECTION 2: All Ordinances or parts of Ordinances, inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 3: 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.

SECTION 4: This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

Introduced: May 23, 2011

Adopted:

Notice is hereby given that the foregoing Ordinance was introduced and passed upon first reading at a meeting of the Mayor and Council of the Township of Berlin, Camden County, New Jersey on May 9, 2011 and the same was ordered published pursuant to statute. Said ordinance will be further considered for final adoption at a meeting of the Mayor and Council of the Township of Berlin on June 13, 2011 at 6:30 p.m. at the Berlin Township Municipal Hall, 135 Route 73 South, West Berlin, NJ.

Catherine Underwood
Township Clerk