

O-19-18

AN ORDINANCE AMENDING CHAPTER 24 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF WHARTON, COUNTY OF MORRIS, STATE OF NEW JERSEY

BE IT ORDAINED by the Governing Body of the Borough of Wharton that Chapter 24 Criminal Background Checks of the revised general ordinances of the Borough of Wharton is hereby amended as follows:

§ 24-1. Definitions.

~~As used in this chapter, the following definitions relative to criminal history background checks for employees, appointees and volunteers shall apply:~~

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's Identification Division and the State Bureau of Identification in the Division of State Police.~~

DEPARTMENT

~~The Wharton Police Department.~~

SBI

~~The State Bureau of Identification in the Division of State Police.~~

§ 24-2. Request for criminal background check; costs.

~~A. The Borough shall request that the SBI conduct a criminal history record background check on each prospective Borough employee or appointee and each volunteer involved in any Borough activity, program, committee, board, agency, or in any way serving or associated with the Borough.~~

~~B. Each prospective employee, appointee and volunteer shall complete all forms necessary to apply to the SBI for a background check with the Department. The Department shall collect all forms necessary to apply and shall submit them to the SBI with a request that the SBI shall forward the information to the Chief of Police. Upon receipt, the Chief shall inform the Borough Administrator whether the person's criminal history record background check reveals a conviction of a potentially disqualifying crime or offense as specified in § 24-3 of this chapter. The Borough Administrator shall review the background check with the Personnel Committee of the Council, which shall determine whether the person's criminal history adversely affects the person's ability to serve in the intended capacity. The determination of the Committee shall be communicated to the Mayor and Council if necessary.~~

~~C. The Borough shall conduct a criminal history record background check only upon receipt of the written consent to the check from the prospective employee, appointee or volunteer.~~

~~D. The Borough shall pay all costs associated with conducting criminal history background checks.~~

~~§ 24-3. Conditions for disqualification from service.~~

~~A person may be disqualified from serving as a Borough employee, appointee or volunteer if that person's criminal history record background check reveals a record of conviction of any of the following crimes or offenses:~~

~~A. In New Jersey: any crime, attempt or conspiracy to commit any crime of the first, second, third or fourth degree or any disorderly persons offense;~~

~~B. In any other state or jurisdiction: conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly person offenses described in Subsection A of this section.~~

~~§ 24-4. Limitations on access; use of criminal history record information.~~

~~A. Access to criminal history record information for noncriminal justice purposes, including licensing and employment, is restricted to authorized personnel of the Borough on a need-to-know basis, as authorized by federal or state statute, rule or regulation, executive order, administrative code, local ordinance or resolution regarding obtaining and dissemination of criminal history record information obtained under this chapter.~~

~~B. Such persons or organizations shall limit their use of criminal history record information solely to the authorized purpose 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. This record shall be destroyed immediately after it has served its intended and authorized purpose. Any person violating federal or state regulations governing access to criminal history record information may be subject to criminal and/or civil penalties.~~

~~§ 24-5. Applicant's right to challenge accuracy of report.~~

~~If this criminal history record may disqualify an applicant for any purpose, the person making the determination shall provide the applicant with an opportunity to complete and challenge the accuracy of the information contained in the criminal history record. The applicant shall be afforded a reasonable period of time to correct and complete this record. A person shall not be presumed guilty of any charges or arrests for which there are no final dispositions indicated on the record.~~

§ 24-1. Background Checks Required; costs.

- A. The Borough performs criminal background checks on all candidates for employment after they receive and accept an offer of employment with the Borough. Background checks will continue to be administered every three years for any employee who works directly or indirectly with children/youth/minors. Periodic background checks may also be conducted for other positions or offices when required by law, or as necessary to assure the individual's ability to continue to perform the essential functions of the office or position he or she holds.**
- B. A criminal record does not automatically disqualify an employees or candidate for employment from employment with the Borough. As described in more detail below, the Borough will review any revealed criminal history and make a determination on case by case basis in light of the nature of the crime, the time elapsed since conviction or completion of sentence, and the office or position in question.**
- C. The Borough shall pay all costs associated with conducting criminal history background checks.**

§ 24-2. Background Check Procedure.

- A. The Borough Administrator, or such other Borough official as may be assigned, will perform or initiate background checks, and be the recipient of reports from outside agencies or contractors.**
- B. The background check process is initiated by having the employees and candidates for employment complete a written consent form to perform the criminal background check.**
 - a. Written information received from the State Bureau of Identification, New Jersey Division of State Police, pursuant to a "Request for Criminal History Record Information for a Noncriminal Justice Purpose" will be destroyed immediately after it has served its authorized purpose to the extent so required by applicable regulations. Such information will be kept confidential and will not be published or disclosed in any manner not consistent with the procedures listed herein. Such information will not be deemed a public record under P.L. 1963, c.73 (C:47:1A-1, et seq.), as amended and supplemented by P.L. 2001, c.404 (C:47:1A-5, et seq.).**
 - b. If the Borough decides to contract with a private contractor to process the background checks, that contractor may be authorized to inform the person in writing of any information which disqualifies the person from employment. Background checks conducted by private contractors shall be conducted in accordance with the federal Fair Credit Reporting Act.**
- C. The Borough Administrator, or such other Borough official as may be assigned, will discuss the revealed criminal background information received with the affected individual. If the individual disputes the information, he/she shall be allowed a**

reasonable period of time to correct the information. However, when the revealed information disqualifies the employee from fulfilling or performing the essential functions of his or her office or position or reveals a risk of harm to other employees or the public, the individual shall be relieved of all such responsibilities pending this reasonable period of time. If an existing employee does not contest the information or is unable to have the information corrected after a reasonable period of time, the employee will be placed on immediate suspension pending the outcome of any appeal. Employee suspensions may be with or without pay at the discretion of the Borough Administrator.

D. Should the Borough determine that a criminal record prevents an individual from holding his/her office or position with the Borough, the Borough shall inform the individual in writing of the basis for disqualification.

§ 24-3. Conditions Under Which an Employee or Candidate for Employment Will Be Disqualified

A. An employee or candidate for employment may be disqualified from employment when a criminal background check reveals a record of conviction of any crime or disorderly persons offense, as defined by New Jersey law, by analogous laws in other States, or by federal law, that reflects adversely on the employee's ability to perform the job he/she was hired for. For example, employees and candidates responsible for working with children/youth/minors may be disqualified based on a conviction for:

- a. Homicide (N.J.S.A. 2C:11);
- b. Assault, reckless endangerment, threats, stalking (N.J.S.A. 2C:12);
- c. Kidnapping (N.J.S.A. 2C:13);
- d. Sexual Offenses (N.J.S.A. 2C:14);
- e. Offenses Against the Family, Children and Incompetents (N.J.S.A. 2C:24);
- f. Controlled Dangerous Substances (N.J.S.A. 2C:35 except for 2C:35-10(a)4);
- g. Robbery (N.J.S.A. 2C:15); or
- h. Theft (N.J.S.A. 2C:20).

B. Disqualification will be based upon a conviction for a disqualifying crime and offense. An acquittal, a dismissal, successful completion of Pre-Trial Intervention (PTI), or an expungement of a crime or offense (except when applicable law requires consideration of expunged crimes or offenses), will not be considered a disqualifying conviction.

C. An arrest record standing alone shall not be used as the basis for an adverse employment action. An arrest may in some circumstances trigger further inquiry into the underlying facts and circumstances. In such a case, adverse employment action may be taken based on the underlying facts and circumstances to the extent they are job related for the specific office or position in question and are consistent with business necessity. However, adverse action will not be taken solely based on the fact that a candidate has an arrest record.

D. In making a determination whether the record of conviction disqualifies an employee or candidate for employment, the Borough shall take into account the nature of the crime or offense, the time that has elapsed since conviction or completion of sentence, and the nature of the employee's position. Specifically, the Borough shall determine whether the exclusion is job related for the specific office or position in question, and consistent with business necessity.

E. In applying these criteria, the Borough shall treat employees and candidates for employment equally, and shall not discriminate based on race, nationality or any other characteristics protected by the state or federal discrimination laws.

§ 24-5. Appeal Process

A. Once an employee or candidate has been notified of a disqualifying conviction, such individual has 14 calendar days to file a Notice of Appeal with the Borough. Such Notice of Appeal must be submitted in writing to the Borough Administrator. The Notice of Appeal should explain whether the information on which disqualification is based is inaccurate or incomplete or provide evidence of rehabilitation. The decision on appeal shall be made by the Appeals Committee, which shall be comprised of at least three persons whom the Borough shall designate.

B. During the 14-day period listed above, and until the issuance of the decision on the appeal, an employee will remain on suspension if the Borough determines that suspension is warranted.

a. In making a determination on the appeal, the following information will be considered:

b. The nature and responsibility of the position which the convicted individual would hold, has held, or currently holds, as the case may be.

c. The nature and seriousness of the crime or offense.

d. The circumstances under which the crime or offense occurred.

e. The date of the crime or offense.

f. The age of the individual when the crime or offense was committed.

g. Whether the crime or offense was an isolated or a repeated incident.

h. Any social conditions which may have contributed to the commission of the crime or offense.

i. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received.

- j. Acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.*
 - k. Whether the individual performed the same type of work after the conviction, with the same or different employer, with no known incidents of criminal conduct.*
 - l. The length and consistency of employment history before and after the offense or conduct.*
 - m. Employment and character references and any other information regarding fitness for a particular position.*
- C. The Borough will issue a written determination on the individual's appeal of their disqualifying conviction, setting forth the reasons for the determination. Such decision shall be final.*

First Reading: December 3, 2018
Second Reading: December 17, 2018

BOROUGH OF WHARTON

ATTEST:

WILLIAM J. CHEGWIDDEN,
MAYOR

Gabrielle Evangelista,
Borough Clerk