

ORDINANCE NO. 2011-03

AN ORDINANCE SUPPLEMENTING THE BOROUGH CODE OF THE BOROUGH OF HARVEY CEDARS TO ADD TO CHAPTER 2, ENTITLED “ADMINISTRATION”, SECTION 2-14 ENTITLED “BACKGROUND CHECKS”

BE IT ORDAINED by the Board of Commissioners of the Borough of Harvey Cedars, as follows:

SECTION 1. Chapter 2 of the Borough Code of the Borough of Harvey Cedars entitled “Administration” is hereby amended and supplemented so as to replace Section 2-14 entitled “Repealed” with Section 2-14 entitled “Background Checks for Vendors”, which shall read as follows:

2-14 BACKGROUND CHECKS.

2-14.1 Definitions. As used in this section, 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 New Jersey State Bureau of Identification in the Division of State Police.

NON-SPONSORED YOUTH PROGRAMS – Any youth programs not sponsored by the Borough of Harvey Cedars but that utilize municipal facilities or have affiliation with a Borough-sponsored youth program and having contact with persons under the age of 18 years.

BOROUGH-SPONSORED YOUTH PROGRAMS – Any programs sponsored by the Borough of Harvey Cedars, including any and all leagues, boards and commissions falling within the purview of or acting for or on behalf of the Borough of Harvey Cedars and having contact with persons under the age of 18 years. For purposes used in this section, a program does not include a one-time Borough-sponsored special event.

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 Borough other than a parent or caregiver.

2-14.2 Non-Sponsored Youth Programs.

A. Prior to any club or organization, not defined as a Borough-sponsored youth program, being authorized to use Borough-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 Harvey Cedars Chief of Police or his designee 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 Harvey Cedars Police Department.

B. The submission of background check findings must be based upon a check performed within two years of the start of use of the Borough-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 Borough-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 Borough for individuals involved in administering Borough-sponsored youth programs. The cost of background checks for individuals not administering a Borough-sponsored

program shall be borne by the individual or program with which they are participating.

2-14.3 Borough-Sponsored Youth Programs.

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 of Harvey Cedars sponsored function participated in by children, shall submit sufficient information on forms supplied by the Harvey Cedars Chief of 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 Harvey Cedars Police Department. Individuals involved in a Borough-sponsored youth function, and who are required to undergo background checks based upon this section, shall not be responsible for the costs involved with obtaining the criminal background check. The Borough of Harvey Cedars shall bear the costs for the background checks for individuals qualified under this section.

2-14.4 Qualification. Individuals qualified in providing recreation opportunities for, or on behalf of, the Borough of Harvey Cedars shall be issued a permit by the Municipal Clerk with appropriate expiration dates based upon the date of their individual background check.

2-14.5 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 Police Chief or his designee shall notify the applicant and the president or leader of the recreation program of affirmative or negative results. The determination of the Police Chief is based upon 2-14.5B of this section. Details in the background check that result in a negative determination by the State Police are not afforded to the Police Chief 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:

- 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.A. 2C:11-1 et seq., N.J.S.A. 2C:12-1 et seq., N.J.S.A. 2C:13-1 et seq., N.J.S.A. 2C:14-1 et seq. or N.J.S.A. 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.A. 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.A. 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 B.1 above.

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 section 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-Borough-sponsored youth program to subscribe to the requirements of this section shall forfeit that program's ability to use municipal facilities.

2-14.6 Frequency of Background Checks.

A. All non-sponsored youth programs that have individuals subject to this section shall supply background checks for all of its participants prior to the individual being able to participate at any function at a Borough-owned facility to the extent covered by this section. Thereafter, every two years a new background check shall be submitted to the Police Chief.

B. All Borough-sponsored youth programs that have individuals subject to this chapter shall direct those individuals to the Police Chief for background checks prior to the individual being able to participate at any function sponsored by the Borough of Harvey Cedars. Thereafter, every two years a new background check shall be submitted to the Police Chief. Individuals involved in Borough-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 2 weeks. Only one interim approval may be granted per individual.

2-14.7 Privacy. Any and all criminal background checks supplied to the Police Chief or his designee 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 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.

2-14.8 Violations and Penalties. Each person violating any of the provisions of this section shall, upon conviction thereof, be liable to the penalty stated in Chapter III, section 3-9.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are repealed to the extent of such inconsistency.

SECTION 3. If any word, phrase, clause, section or provision of this ordinance shall be found by any court of competent jurisdiction to be unenforceable, illegal or unconstitutional, such word, phrase, clause, section or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

SECTION 4. This ordinance shall take effect immediately upon publication in accordance with law.

EFFECTIVE DATE: 03/24/2011