

**BOROUGH OF EMERSON  
COUNTY OF BERGEN  
NOTICE OF ADOPTION**

**ORDINANCE 1554-18**

**Introduced: March 20, 2018  
Adopted: April 3, 2018**

**AN ORDINANCE AMENDING CHAPTER 61,  
PARKS, PLAYGROUNDS AND RECREATION, DEPARTMENT OF, SECTION 8.1,  
MANDATORY BACKGROUND CHECKS,  
OF THE CODE OF THE BOROUGH OF EMERSON,  
BERGEN COUNTY, NEW JERSEY**

**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 3rd day of April, 2018. A copy of Ordinance 1554-18 is on file in the Borough Clerk's Office in the Municipal Building, 1 Municipal Pl., Emerson, NJ 07630.

**WHEREAS**, the municipal governing body of the Borough of Emerson (the "Borough") wishes to ensure that this municipality is providing the safest possible recreational programs for its youth;

**WHEREAS**, the State of New Jersey has recommended that all youth coaches, youth stipend coaches, and volunteers for recreational, athletic, culture, charitable, social or other activities, services or programs, especially for minors or those who are aged, infirm or in need of assistance co-sponsored by the Borough, or in connection with the Borough's Recreation Department or any other youth serving organizations, who have regular supervised or unsupervised access to minors involved in such youth programs, be required to submit to background checks at the Borough's expense; and

**WHEREAS**, the Borough would like all programs using municipal facilities/equipment, and all programs that are funded or supported by the Borough, in whole or in part (including but not limited to baseball, softball, soccer, football, basketball, wrestling, etc.) be required to perform background checks as a condition of using municipal facilities/equipment and having regular supervised or unsupervised access to minors involved in such youth programs.

**WHEREAS**, P.L. 1999, Chapter 432 (N.J.S.A. 15A:3A-1 et seq.) authorizes and provides for background checks of employees and volunteers of non-profit youth serving organizations as defined in said statute; and

**WHEREAS**, N.J.S.A. 15A:3A-1 permits not-for-profit youth-serving organizations to request the State to perform a criminal background check on current and prospective employees or volunteers in order to check the criminal record, domestic violence and other court/administrative orders/rulings (collectively "Background Check") of those employees or volunteers who have direct contact with minors, in order to eliminate those with convictions for certain crimes and disqualify prospective employees and volunteers who have been convicted of certain offenses; and

**WHEREAS**, the ordinance shall provide that the youth coach, youth stipend coach, or volunteer shall submit to a background check to be conducted by a private agency or an official from the Borough Police Department, whichever method is deemed as necessary and proper in the sole, good faith opinion, and discretion of the Borough Administrator. Said background check shall be performed in accordance with applicable State, federal laws, rules and regulations, and shall further provide that the private agency

or official from the Borough Police Department is authorized to exchange background check data with and receive background check data or other injunctions from entities including, but not limited to: New Jersey State Bureau of Identification in the Division of State Police, the Federal Bureau of Investigation, the National Crime Information Center, National Sex Offender Public Registry, and/or Social Security Administration; and

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of Emerson, within the County of Bergen and State of New Jersey, that the following provisions of Chapter 61-8.1 Mandatory background checks., of the Code of the Borough of Emerson is hereby amended and supplemented as follows:

**Section 1. Section 8.1– Mandatory background checks., of Chapter 61: Parks, Playgrounds and Recreation, Department of, is hereby amended and supplemented as follows:**

§ 61-8.1 Mandatory background checks.

A. 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.

B. Definitions. As used in this section, 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, committees and commissions affiliated with, falling 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.

**BACKGROUND CHECK**

Means a determination of whether a person has a criminal record, domestic violence, and/or other court/administrative orders/rulings which might negatively impact their fitness and suitability to participate as a youth coach, youth stipend coach, and/or volunteer by cross-referencing that person's name 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, the National Crime Information Center, National Sex Offender Public Registry, and/or Social Security Administration, or any such additional entities deemed as necessary and proper in the sole, good faith opinion, and discretion of the Borough Administrator.

#### **NON-MUNICIPAL-SPONSORED YOUTH PROGRAM**

Means any youth program not sponsored by the Borough, but which utilize municipal facilities/equipment or have affiliation with a Borough-Sponsored Youth Program and having contact with persons under the age of 18 years.

#### **YOUTH PROGRAM**

Any program that allows for participation in activities by those persons under the age of 18 years old. Activities may include, but are not limited to, sporting or athletic activities, passive recreation groups, clubs or camps and trips or other activities whereby some control and responsibility for children is assigned to some person for or on behalf of a Borough-Sponsored Youth Program or Non-Municipal-Sponsored Youth Program, other than a parent or caregiver.

#### **PERSONS UNDER THE AGE OF 18, CHILD, CHILDREN, YOUTH, AND MINOR**

All mean persons under the age of 18 and persons older than 18 who are subject to guardianships, or are adjudicated persons in need of supervision.

#### **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.

#### **C. Borough-Sponsored Youth Program - Background checks.**

- (1) 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 youth program or function participated in by children, shall submit sufficient information on forms promulgated by the private agency or Borough, as same may be amended from time to time, or other enforcement authority from the New Jersey State Police, and shall sign, date, and affirm the truth of the information submitted, for the purpose of obtaining a Background Check with the State Bureau of Identification in the New Jersey State Police. Applications for Background Checks, including any and all Background Check data, shall be processed by the Police Chief.
- (2) The individual applying for the background check shall authorize the Police Chief to be the recipient of the affirmative or negative response from the private agency or State Police based upon the findings of the Background Check. Individuals involved in a Borough-sponsored youth program or function, and who are required to undergo Background Checks based upon this chapter, shall not be responsible for the costs involved with obtaining the Background Check. The Borough of Emerson shall bear the costs for Background Checks for individuals qualified under this section.
- (3) 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, as same may be amended from time to time, 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.

D. Non-Municipal-Sponsored Youth Program – Background checks.

- (1) Prior to any club organization, not defined as a Borough-Sponsored Youth Program, being authorized to use municipal facilities/equipment pursuant to Chapter 187 of the Borough Code, or through means of any other approval granted by the Borough or its officials, for functions participated in by children, all adults, persons under the age of 18 years old or older, including but not limited to coaches, assistant coaches, stipend coaches, volunteers, or similar positions involved in education, directing or supervising minors, and in any way assisting in a Non-Municipal-Sponsored Youth Program or function, shall submit sufficient information on forms promulgated by the private agency or Borough, as same may be amended from time to time, or other enforcement authority from the New Jersey State Police, and shall sign, date, and affirm the truth of the information submitted, for the purpose of obtaining a Background Check with the State Bureau of Identification in the New Jersey State Police. Applications for Background Checks, including any and all Background Check data, shall be processed by the Police Chief.
- (2) Prior to any club organization, not defined as a Borough-Sponsored Youth Program, being authorized to use municipal facilities/equipment for functions participated in by children, all adults, persons under the age of 18 years old or older, including but not limited to coaches, assistant coaches, stipend coaches, volunteers, or similar positions involved in education, directing or supervising minors, and in any way assisting in a Non-Municipal-Sponsored Youth Program or function, must provide the Police Chief with up-to-date findings of a Background Check, including any and all Background Check data, obtained from the Federal Bureau of Investigation, Identification Division and/or the New Jersey State Bureau of Identification in the Division of State Police, the National Crime Information Center, National Sex Offender Public Registry, and/or Social Security Administration, or any such additional entities deemed as necessary and proper in the sole, good faith opinion, and discretion of the Police Chief
- (3) The individual applying for the Background Check shall authorize the Police Chief to be the recipient of the response from the private agency or Borough Police Department, based upon the findings of the Background Check. Individuals involved in a Non-Municipal-Sponsored Youth Program or function, and who are required to undergo Background Checks based upon this chapter, shall be responsible for the costs involved with obtaining the Background Check if such individual is unable to otherwise provide the Police Chief with up-to-date findings of a Background Check.
- (4) The submission of Background Check findings must be based upon a check performed within one (1) year of the start of use of the municipal 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 municipal facilities/equipment. 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.

E. Identification cards.

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

F. Disqualification.

- (1) Upon receipt of a completed Background Check conducted by the private agency, Borough and/or 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 § 61-8.1F(2) 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.
- (2) In the event the criminal background check reveals any prior convictions for violations, crimes, offenses, domestic violence and other court/administrative orders/rulings 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 and/or involving the use of any Borough equipment. 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.A. 2C:11-1 et seq., 2C:12-1 et seq., 2C:13-1 et seq., 2C:14-1 et seq. or 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.A. 2C:24-1 et seq. including, but not limited to: endangering the welfare of a child; or N.J.S.A. 2C:24-4 et seq., including, but not limited to: causing or permitting a child to engage in a prohibited sexual act, knowing or intending that the sexual act will be reproduced or will be part of an exhibition or performance.;
    - [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.A. 2C:35-10;
    - [5] Involving possession of weapons for unlawful purposes as set forth in N.J.S.A. 2C:39-1 et seq., including, but not limited to: unlawful possession of weapons, manufacture, transport, disposition and defacement of Weapons and dangerous instruments and appliances.
    - [6] Involving cruelty to animals as set forth in N.J.S.A. 4:22-1 et seq., including, but not limited to: overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelly beat or otherwise abuse, or needlessly mutilate or kill, a living animal or creature;
    - [7] Involving arson and related offenses as set forth in Chapter 17 of Title 2C of the New Jersey Statutes;

[8] Involving fraud as set forth in Chapter 21 of Title 2C of the New Jersey Statutes;

[9] Any 4th degree offense or higher.

[10] Any other sufficient causes deemed as necessary and proper in the sole, good faith opinion and discretion of the Borough Administrator

(b) In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the violations, crimes, offenses, domestic violence, disorderly persons offenses and/or other court/administrative orders/rulings described in Subsection this section.

(3) 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.

(4) Refusal by individuals required to submit to Background Checks will result in an immediate dismissal of the individual from any Borough-sponsored activities or functions 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 and refusal of a Non-Sponsored Youth Programs will result in forfeiture of that individual's ability to participate with the respective program. Refusal of a Non-Municipal-Sponsored Youth Program to subscribe to the requirements of this chapter shall forfeit that program's ability to use municipal facilities/equipment, along with all other municipal support.

#### G. Frequency of background checks.

(1) 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 one year, or in a frequency deemed reasonable by the Borough, a new background check shall be undertaken in accordance with the guidelines set forth in this section. 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 designated time period but who may now be in violation of § 61-8.1F(2), (3) and (4), the Police Chief shall examine and evaluate the information provided on a case-by-case basis and proceed, if necessary, with Subsection C as provided by this section.

(2) All Non-Municipal-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 Borough facility to the extent covered by this Chapter. Thereafter, every one (1) year, or in a frequency deemed reasonable by the Borough, a new Background Check shall be submitted to the Police Chief.

#### H. Appeals.

(1) If a Background Check results in a determination that a person should be disqualified from participating in a Borough-Sponsored Youth Program, said person may appeal the determination by filing a written notice of appeal with the Borough Administrator no later than 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.

- (2) The Appeals Committee shall hear any appeal within 30 days after the filing of the written notice of appeal. The Appeals Committee 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.
- (3) The Appeals Committee shall consist of the Borough Administrator, Police Chief and an officer of the Emerson Police Department appointed by the Police Chief.

I. Privacy.

- (1) 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 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 The Open Public Records Act (N.J.S.A. 47:A-1 et seq.) or New Jersey Right to Know (N.J.S.A. 47:1A-1 et seq.)
- (2) The records shall only be retained for such period of time as is necessary to serve their intended and authorized purpose

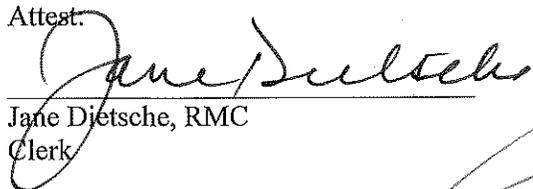
**Section 2. Severability and Repealer.**

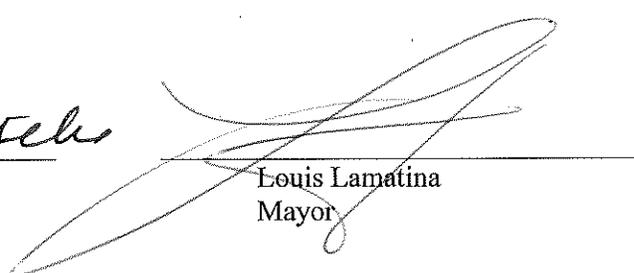
- A. If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.
- B. All ordinances or parts of ordinances, which are inconsistent with any provisions of this ordinance, are hereby repealed as to the extent of such inconsistencies.

**Section 3. Effective Date.**

This ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

Attest.

  
Jane Dietsche, RMC  
Clerk

  
Louis Lamatina  
Mayor

Introduced: 3/20/18

Adopted: 4/3/18