

**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. Background checks required; costs.***

***A. The Borough performs criminal background checks on all candidates for employment over the age of 18, after they receive and accept an offer of employment with the Borough. The Borough performs criminal background checks on all candidates for employment under the age of 18, after they receive and accept an offer of employment with the Borough. Criminal background checks will continue to be administered every three years for any employee who works directly or indirectly with children/youth/minors. Periodic criminal 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. Criminal background checks are required of all volunteers over the age of 18 who will be working directly or indirectly with children/youth/minors. Criminal background checks are required of all volunteers under the age of 18 who will be working directly or indirectly with children/youth/minors. Criminal background checks will be administered every three years for each volunteer, regardless of age, who works directly or indirectly with children/youth/minors.***

***C. A criminal record does not automatically disqualify an employee 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 a 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.***

***D. The Borough shall pay all costs associated with conducting criminal background checks for employees.***

***E. The Borough shall pay all costs associated with the initial criminal history background checks for volunteers in 2020. Thereafter, each organization shall be responsible for the costs for their volunteers.***

***§ 24-2. Background check procedure.***

A. The Borough Administrator, or such other Borough official as may be assigned, will perform or initiate criminal background checks and be the recipient of reports from outside agencies or contractors.

B. The criminal background check process is initiated by having the employees, **candidates for employment, or volunteers** complete a written consent form to perform the criminal background check.

(1) 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 which is inconsistent with the procedures listed herein. Such information will not be deemed a public record under P.L. 1963, c. 73 (N.J.A.C. 47:1A-1, et seq.), as amended and supplemented by P.L. 2001, c. 404 (N.J.A.C. 47:1A-5, et seq.).

(2) If the Borough decides to contract with a private contractor to process the criminal background checks, that contractor may be authorized to inform the person in writing of any information which disqualifies the person from employment. Criminal background checks conducted by private contractors shall be conducted in accordance with the Fair Credit Reporting Act.<sup>[1]</sup>

[1] *Editor's Note: See 15 U.S.C.A. § 1681 et seq.*

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, candidate for employment, or volunteer** will be disqualified.

***A. An employee, candidate for employment, or volunteer may be disqualified 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 individual's ability to perform the job he/she was hired for, has applied for, or***

***has volunteered for. For example, employees, candidates for employment and volunteers responsible for working with children/youth/minors may be disqualified based on a conviction for:***

- (1) Homicide (N.J.S.A. 2C:11);
- (2) Assault, reckless endangerment, threats, stalking (N.J.S.A. 2C:12);
- (3) Kidnapping (N.J.S.A. 2C:13);
- (4) Sexual offenses (N.J.S.A. 2C:14);
- (5) Offenses against the family, children and incompetents (N.J.S.A. 2C:24);
- (6) Controlled dangerous substances (N.J.S.A. 2C:35 except for 2C:35-10(a)(4));
- (7) Robbery (N.J.S.A. 2C:15); or
- (8) 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 action. An arrest may in some circumstances trigger further inquiry into the underlying facts and circumstances. In such a case, adverse action may be taken based on the underlying facts and circumstances, to the extent they are related to 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 an employee, candidate or volunteer has an arrest record.

**D.** In making a determination whether the record of conviction disqualifies an ***employee, candidate for employment, or volunteer***, 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 specific ***office or position*** in question. Specifically, the Borough shall determine whether the exclusion is related to the specific office or position in question and consistent with business necessity.

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

#### § 24-4. Appeal process.

A. Once an ***employee, candidate for employment, or volunteer*** has been notified of a disqualifying conviction, such individual has fourteen (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 shall 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 (3) persons whom the Borough shall designate.

**B. During the fourteen-day period listed above and until the issuance of the decision on the appeal, an employee, candidate for employment or volunteer will remain on suspension if the Borough determines that suspension is warranted. In making a determination on the appeal, the following information will be considered:**

- (1) The nature and responsibility of the specific office or position which the convicted individual would hold, has held, or currently holds, as the case may be.**
- (2) The nature and seriousness of the crime or offense.**
- (3) The circumstances under which the crime or offense occurred.**
- (4) The date of the crime or offense.**
- (5) The age of the individual when the crime or offense was committed.**
- (6) Whether the crime or offense was an isolated or a repeated incident.**
- (7) Any social conditions which may have contributed to the commission of the crime or offense.**
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received.**
- (9) Acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendations of those who have had the individual under their supervision.**
- (10) Whether the individual performed the same type of work after the conviction, with the same or different employer or volunteer-based organization, with no known incidents of criminal conduct.**
- (11) The length and consistency of employment or volunteer history before and after the offense or conduct.**
- (12) Employment, volunteer and character references and any other information regarding fitness for a particular office or 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 9, 2019**

**Second Reading: December 30, 2019**

**ATTEST:**

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**Gabrielle Evangelista,  
Borough Clerk**

**BOROUGH OF WHARTON**

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**WILLIAM J. CHEGWIDDEN,  
MAYOR**