

**ORDINANCE 2012-09**

**AN ORDINANCE OF THE TOWNSHIP OF HARDYSTON,  
COUNTY OF SUSSEX, AND STATE OF NEW JERSEY TO  
AMEND CHAPTER 3, ADMINISTRATION OF  
GOVERNMENT, AND ESTABLISH ARTICLE XVI,  
CRIMINAL HISTORY RECORD BACKGROUND CHECKS  
OF PROSPECTIVE AND CURRENT EMPLOYEES OF THE  
TOWNSHIP OF HARDYSTON, OF THE CODE OF THE  
TOWNSHIP OF HARDYSTON MANDATING CRIMINAL  
HISTORY RECORD BACKGROUND CHECKS FOR ALL  
PROSPECTIVE AND CURRENT EMPLOYEES OF THE  
TOWNSHIP OF HARDYSTON**

**WHEREAS**, the Township of Hardyston desires to conduct criminal history record background checks of its current and prospective employees in order to protect and serve the interests of the residents of the Township of Hardyston.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Hardyston, in the County of Sussex, and State of New Jersey, as follows:

**Section 1.** Add to Chapter 3, Administration of Government, Article XVI entitled “Criminal History Record Background Checks of Prospective and Current Employees of the Township of Hardyston” as follows:

**Article XVI. Criminal History Record Background Checks of Prospective and Current Employees of the Township of Hardyston**

**§ 3-66. Definitions.**

As used in this article, the terms used in this Article herein shall have the meanings set forth as N.J.A.C. 13:59-11 and as indicated below:

**Criminal History Record Information (“CHRI”)**

Information collected by criminal justice agencies concerning persons and stored in the central repository of the New Jersey State Police State Bureau of Identification, the National Crime Information Center or other states’ computerized repositories containing criminal history record information consisting of identifiable descriptions and notations of arrests, indictments, or other formal criminal charges, and any dispositions arising

therefrom, including convictions, pending court actions, dismissals, acquittals, sentencing, correctional supervision and release.

## **Employees**

All full-time, part-time and seasonal employees of Hardyston Township, except those otherwise addressed by law or contract, or employed by the Hardyston Township Recreation Department as covered under Article VI, "Criminal History Record Background Checks of Employees and Volunteers of Nonprofit Youth-Serving Organizations," of the Township Code.

## **State Bureau of Identification ("SBI")**

The entity located within the New Jersey State Police responsible for retrieving criminal background information on individuals as requested by state, local or private entities.

### **§ 3-67. Criminal history record background check required; costs.**

- A. The Township of Hardyston requires that all prospective and current employees of the Township consent to a criminal history record background check to allow the Township access to his or her criminal history record information by fully completing SBI Form 212B in accordance with N.J.A.C. 13:59-1.1 et seq. No prospective employee will be permitted to act as an employee until the results of the background checks have been received and reviewed by the Township Manager.
- B. Any information received by the Township Manager shall be confidential.
- C. The Township of Hardyston shall bear the costs for conducting the criminal history background check.

### **§ 3-68. Disqualifying conditions.**

- A. A person may be disqualified from serving as an employee and/or may have his or her employment terminated with the Township of Hardyston if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:
  - a. In New Jersey, any crime or disorderly persons offense:
    - i. Involving danger to the person, meaning those crimes and disorderly persons offenses as set forth in N.J.S.A. 2C:11-1 et seq., such as criminal homicide; N.J.S.A. 2C:12-1 et seq., such as assault, reckless endangerment, threats, stalking; N.J.S.A. 2C:13-1 et seq., such as kidnapping; N.J.S.A. 2C:14-1 et seq., such as sexual assault; or N.J.S.A. 2C:15-1 et seq., such as robbery.

- ii. 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., such as endangering the welfare of a child.
  - iii. Involving theft as set forth in Chapter 20 of Title 2C of the New Jersey Statutes.
  - iv. 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.
- b. 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 A of this section.
- B. In addition, a person shall be disqualified from serving as an employee or shall have his or her employment terminated with the Township of Hardyston if such individual fails to consent to submit to a criminal history record background check pursuant to this Article.

**§ 3-69. Submission requirements; exchange of background check information.**

- A. Prospective and current employees of the Township of Hardyston shall fully complete SBI Form 212B and provide any other necessary information to the Township for the criminal history background check to be performed. The Township shall submit this documentation to SBI for the background check. Thereafter, the Township shall conduct periodic background checks after the date of the initial background check, but not less than every three (3) years.
- B. The Township Manager shall act as a clearinghouse for the collection and dissemination of information obtained as a result of conducting criminal history record background checks pursuant to this section. The Township Manager shall maintain a list of successful background checks.

**§ 3-70. Limitations on access and use of criminal history record information.**

- A. Access to the criminal history record information of all prospective and current employees of the Township of Hardyston for noncriminal justice purposes is restricted to the Township Manager, 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 section.
- B. The Township Manager shall limit his or her 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. This record shall be destroyed immediately after it has served its intended and authorized purpose. Any person violating the federal or state regulations governing access to criminal history record information may be subject to criminal and/or civil penalties.

**§ 3-71. Determination by the Township; appeals.**

- A. If a person's criminal history background record check reveals a record of conviction of any of the crimes or offenses set forth in § 3-68, the Township Manager shall notify in writing that person of his or her disqualification from employment with the Township, and such information shall be kept confidential by the Township Manager.
- B. Any person whose criminal history background check disqualifies that person from employment may appeal his or her disqualification within thirty (30) days of receipt of notice of said disqualification with the Township Council. Failure to appeal will result in automatic disqualification from employment with the Township.
  - a. A person may challenge the accuracy of the criminal history record.
  - b. A person may claim to be rehabilitated. In determining whether a person has affirmatively demonstrated clear and convincing evidence of rehabilitation, the appeals committee may consider the following factors in conjunction with the provisions of N.J.S.A. 15A:3A-1 et seq.:
    - i. The nature and responsibility of the position which the convicted person would hold or has held, as the case may be;
    - ii. The nature and seriousness of the offense;
    - iii. The circumstance under which the offense occurred;
    - iv. The date of the offense;
    - v. The age of the person when the offense was committed;
    - vi. Whether the offense was an isolated or repeated incident;
    - vii. Any social conditions which may have contributed to the offense; and
    - viii. Any evidence of rehabilitation, including good conduct in prison or the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs or the recommendation of those who have had the person under their supervision.

- c. No person may appeal a disqualification on the grounds of rehabilitation, if the person has been rejected because that person has been convicted, adjudicated delinquent or acquitted by reason of insanity of aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of *N.J.S.A. 2C:13-1*; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of *N.J.S.A. 2C:24-4*; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of *N.J.S.A. 2C:24-4*; luring or enticing pursuant to section 1 of P.L.1993, c.291 (*N.J.S.A. 2C:13-6*); criminal sexual contact pursuant to *N.J.S.A. 2C:14-3b*. if the victim is a minor; kidnapping pursuant to *N.J.S.A. 2C:13-2*, or false imprisonment pursuant to *N.J.S.A. 2C:13-3* if the victim is a minor and the offender is not the parent of the victim; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of *N.J.S.A. 2C:34-1*; or an attempt to commit any of these enumerated offenses.
- C. While the appeal is pending, an existing Township employee may, at the discretion of the Township Manager and based upon the severity of the disqualifying condition, be:
- a. Temporarily suspended with pay;
  - b. Temporarily suspended without pay; or
  - c. Remain employed with the Township with pay.

If an employee is suspended without pay and the Township Council overturns the disqualification, he or she shall be fully reimbursed for all pay lost during the time of suspension. A prospective employee shall not commence employment until a final determination has been made of his or her appeal by the Township Council.

- D. In all instances, the final determination of whether a person will be permitted to serve as an employee will lie in the sole discretion of the majority of the Township Council.
- E. The Township Council shall promptly advise the prospective or current employee whether he or she is qualified.

### **§ 3-72. Exemptions.**

The Township shall only permit the following exemptions under this article:

- A. Any person who, by virtue of his/her occupation, is required by statute to undergo a federal and state criminal history record background check similar in nature to the requirements contained herein, and who can provide proof of the results of such background check, is exempt from the requirement hereunder if such check was

conducted within the past year. After such demonstration of proof of compliance, such individual shall then be subject to subsequent checks pursuant to § 3-69(A).

B. Any active employees of local, county and state law enforcement agencies.

**SECTION 2.**All ordinances of the Township of Hardyston, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

**SECTION 3.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

**SECTION 4.**This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law. All current employees must provide his or her consent to a criminal history record background check within thirty (30) days in accordance with § 3-69.

**BY ORDER OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF HARDYSTON.**

**NOTICE**

**PLEASE TAKE NOTICE** that notice is hereby given that the above ordinance was introduced and passed at the regular meeting of the Hardyston Township Council held at the Municipal Building, 149 Wheatsworth Road, Hardyston, New Jersey, on September 18, 2012. The same came up for final adoption at a meeting of the Township Council of the Township of Hardyston held on October 2, 2012, and after all persons present were given the opportunity to be heard concerning the same, it was finally passed, adopted and will be in full force and effect in the Township according to law.

**BY ORDER OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF HARDYSTON.**

**JANE BAKALARCZYK, RMC/CMC  
TOWNSHIP CLERK**