BOROUGH OF ROSELAND

ORDINANCE #18-2008

AN ORDINANCE TO AMEND AND SUPPLEMENT AN ORDINANCE ENTITLED CHAPTER II, ENTITLED "ADMINISTRATION", ARTICLE IV, ENTITLED "DEPARTMENTS ESTABLISHED", SECTION 2-38, ENTITLED "CRIMINAL BACKGROUND CHECKS OF EMPLOYEES AND VOLUNTEERS OF NON-PROFIT YOUTH SERVICING ORGANIZATION AND/OR EMPLOYEES AND VOLUNTEERS INVOLVED WITH BOROUGH SPONSORED PROGRAMS OR SERVICES FOR MINORS" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF ROSELAND" ADOPTED ON MAY 23, 2006.

WHEREAS, the Governing Body of the Borough of Roseland (the "Borough") has determined that it is in the best interest of the Borough and its citizens to ensure that the Borough is providing the safest possible recreational and other programs for its youth; and

WHEREAS, N.J.S.A. 15A:3A-1 *et seq.,* permits the Borough to request and arrange for the New Jersey State Police and more particularly, the State Bureau of Identification in the Division of New Jersey State Police (the "SBI"), to conduct a criminal history record background check on each prospective and current employee or volunteer participating in any Borough endorsed or sponsored programs, which provide recreational, cultural, charitable, social or other activities for persons younger than 18 years of age or which involve youth athletic programs utilizing Borough facilities; and

WHEREAS, applicable law permits the Borough to make such a request for and arrangements for criminal history background checks with the SBI or with or through a program approved by, authorized by or sponsored by or affiliated with the SBI; and

WHEREAS, the Recreational Committee of the Borough and the Director of the Recreation Department of the Borough have recommended that all current and prospective employees and volunteers involved with such youth programs be required to submit to such criminal history record background checks at a cost to be borne by the Borough; and

WHEREAS, the Governing Body of the Borough has determined that it is in the best interest of the Borough and its citizens that all youth programs which are sponsored by the Borough or which utilize Borough facilities be required to perform criminal history record background checks on their employees and volunteers.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF ROSELAND, IN THE COUNTY OF ESSEX AND STATE OF NEW JERSEY, AS FOLLOWS:

That Chapter II, entitled "Administration", Article IV, entitled "Departments Established" of the Revised General Ordinances of the Borough of Roseland, Adopted on May 23, 2006, is amended and supplemented to establish, add and include Section 2-38, entitled "Criminal Background Checks of Employees and Volunteers of Non-Profit Youth Servicing Organization and/or Employees and Volunteers Involved with Borough Sponsored Programs or Services for Minors" as follows.

2-38. Criminal History Background Checks of Employees and Volunteers of Non-Profit Youth Servicing Organization and/or Employees and Volunteers Involved with Borough Sponsored Programs or Services for Minors.

2-38.1 Definitions.

As used in this Ordinance, the following words will have the following meanings.

a. "Borough sponsored programs" means any program sponsored by the Borough, which provides and/or utilizes Borough facilities and/or Borough property including, but not limited to, recreation, cultural, charitable, social or athletic programs.

b. "Chief of Police" means the Chief of Police of the Borough of Roseland Police Department.

c. "Criminal history record background check", means an inquiry and process to determine whether or not a person has a criminal record by cross-referencing that person's name and/or fingerprints with those on file with the Federal Bureau of Investigation, Identification Division and/or the SBI through any program approved by, authorized by or sponsored by or affiliated with the SBI.

d. "Non-profit youth servicing organization" means a corporation, association, business entity or other organization established pursuant to Title 15 of the Revised Statutes, Title 15A of the New Jersey Statutes, or other law of this state, but excluding public and non-public schools, which provides recreational, cultural, charitable, social or other activities or services for persons younger than 18 years of age, and is exempt form federal income taxes, and will include the Borough of Roseland Recreation Department.

e. "Police Department" means the Borough of Roseland Police Department.

f. "Recreation Department" means the Borough of Roseland Recreation Department.

g. "SBI" means the State Bureau of Identification in the Division of New Jersey State Police.

h. "Volunteer" means any person involved with a Non-profit youth servicing organization or with a Borough sponsored program or with a program that utilizes Borough facilities, who has or who have direct access to minors as a result of their involvement with the organization.

2-38.2 Requirement of Criminal History Background Checks.

a. The Borough requires that each prospective or current employee and each prospective and current volunteer of a Non-profit youth servicing organization involving minors to submit to and participate in a criminal history record background check as required by this Ordinance including, but not limited to, the submission of such person's name, address, fingerprints and written consent to the Non-profit youth servicing organization or Borough. The Non-profit youth servicing organization or the Borough, as applicable, will submit the background information and documentation to the Division of New Jersey State Police after having coordinated the taking of the person's fingerprints through the Chief of Police or the designee of the Chief of Police.

b. The Non-profit youth servicing organization must register with the SBI's Voluntary Review Operations program (the "VRO") in accordance with VRO's registration requirements which include, among other things: (1) the submission of a Short Form of Standing from the State of New Jersey Department of the Treasury (Division of Revenue website); and (2) the submission of a Federal Tax Exemption with the Internal Revenue Service – Letter of Determination; and (3) the execution of a Memorandum of Understanding. The Borough must register with the VRO in accordance with the VRO's registration

requirements for municipalities including, among other things, a Memorandum of Understanding.

c. The SBI, through the process and in accordance with the conditions set forth in this Ordinance, will inform the Non-profit youth servicing organization or the Borough, as applicable, whether or not the prospective or current employee's or volunteer's criminal history record background check reveals a conviction of a disqualifying crime or offense set forth in this Ordinance.

d. A criminal history record background check of a prospective or current employee or volunteer will only be conducted upon receipt of the written consent by such employee or volunteer.

e. The Borough will bear the costs associated with conducting the criminal history record background checks.

2-38.3 Conditions of Disqualification from Service.

a. A person will be disqualified from serving as an employee or as a volunteer of a Non-profit youth serving organization if that person's criminal history record background check reveals a record of conviction of any of the following crimes or offenses.

1. In the State of New Jersey, if any crime or if any disorderly persons offense:

(a) involves 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.*, N.J.S.A. 2C:15-1, *et seq.*; or

(b) is 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.*; or

(c) involves theft as set forth in Chapter 20 of the Title 2C of the New Jersey Statutes; or

(d) involves 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 state or jurisdiction other than the State of New Jersey, if the conduct of a person is such that, if such crime or disorderly persons offense was committed in the State of New Jersey, such crime or disorderly persons offense is described in the preceding Subsection 1 of this Section.

b. A person who submits to or participates in a criminal history background check in accordance with this Ordinance has a continuing obligation to notify the Non-profit youth organization and the Chief of Police, as applicable, if that person is convicted of any disqualifying crime or disorderly persons offense enumerated in Section 2-38 subsequent to the performance of an initial criminal history background check.

2-38.4 Submissions – Exchange of Background Check Information.

a. Upon registration with the VRO as required by this Ordinance, the VRO program will provide the Non-profit youth servicing organization with an organization specific identification number, a Universal Finger Print Live Scan Form and detailed instructions for the submission of a criminal background check.

b. The VRO will process an applicant's criminal history background check submission including, among other things, the fingerprint cards and review of records. The VRO will then respond to or otherwise notify the Non-profit youth servicing organization, the Borough or agency registered with VRO with a letter reporting a recommendation of approval or denial.

c. The processing of the criminal history background check may be performed by SBI and in accordance with SBI's application procedures through a contract vendor or through contract vendors who are approved by the State of New Jersey including, but not limited to the current State of New Jersey contract vendor, Sagem Morpho, Inc.

d. The Non-profit youth servicing organization must act as a clearinghouse of the collection and dissemination of information obtained as a result of conducting criminal history record background checks pursuant to this Ordinance.

e. The Non- profit youth servicing organization must coordinate a criminal history background check every three (3) years after the initial check, for as long as the prospective or current employees and volunteers shall remain involved in Non-profit youth servicing organizations and/or Borough sponsored programs involving minors.

2-38.5 Limitations on Access and Use.

a. Access to criminal history record information for non-criminal justice purposes, including licensing and employment, is restricted to authorized personnel of the Non-profit youth servicing organization or, in the case of the Borough, with the Chief of Police, on a need to know basis, as authorized by this Ordinance or by a federal or state statute, rule or regulation, executive order, or administrative code, regarding obtaining and dissemination of criminal history record information obtained under this Ordinance or applicable law.

b. Any person who is authorized to obtain criminal history record information under this Ordinance will limit the use of such criminal history record information solely to the authorized purpose for which it was obtained. Criminal history record information furnished must not be and will not be disseminated to persons or organizations not authorized to receive the records for the authorized purposes. Use of the criminal history record is and will be limited solely to the authorized purposes for which it was given and will not be disseminated to any unauthorized persons.

2-38.6.1.1 Challenge to the Accuracy of a Report.

a. If the criminal background checks results in a report or letter that provides, in pertinent part, that a person is disqualified under the terms and conditions of this Ordinance (a "Negative Response") then, as applicable, the Non-profit youth servicing organization or the Chief of Police will communicate in writing with the person who is the subject of the Negative Response explaining that such person's request to participate applicable activity as an employee or as a volunteer, has been denied or that the person has been deemed to be disqualified . The person so notified may then contact the VRO, the New Jersey State Police and any

other governmental agencies having jurisdiction is such matters to determine the reasons for the Negative Response or to challenge the information set forth in, the accuracy of or the conclusions of the Negative Response.

b. If a person who is the subject of a Negative Response wants to make an application, as an employee or as a volunteer, for any future activities in conjunction with the Borough's Recreation Department, it is the responsibility of the such person to take the appropriate action to arrange for the Negative Report to be withdrawn or corrected under applicable law to enable such individual to qualify for such participation as an employee or as a volunteer. In conjunction with any new application by a person who has been the subject of a Negative Report and who has successfully challenged a Negative Report, such a person will be required to resubmit an application for a criminal background check under this Ordinance and submit to the application process which may require the fingerprinting and background checks of the SBI in order to satisfy the requirements established by this and any other applicable ordinances or laws.

2-38.7 Miscellaneous

a. Any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby replaced as of the effective date of this Ordinance.

b. If any provisions of this Ordinance or the application of such provisions to any person or circumstance is declared invalid, such invalidity shall not effect the other provisions or applications of this Ordinance, which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

This Ordinance will take effect upon final passage and publication as required by law.

John Arvanites, Mayor

Thomas P. Kaczynski, Borough Clerk

Introduced: October 21, 2008
Published: October 30, 2008
Public Hearing: November 25, 2008
Adopted: November 25, 2008

ROLL CALL

Aye: Christiana, Duthie, McGovern, Moore, Tolli
Nay: N/A
Absent: Jacobs
Abstain: N/A

Second Publication: December 4, 2008
Official: December 24, 2008