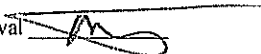


Legal Counsel Approval 

R.L 07-135

Intro. No. 007-35

Perm. No. 007-39



IN
THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK

Dated: July 16, 2007

Sponsored by Councilmember(s): Gerchman, Rennia, Kramer, Cordisco, Russo, Massar,
Weslar, Collins, Papastrat

Introduced by Committee(s) on: Employees

ORDINANCE
entitled

AN ORDINANCE TO IMPLEMENT A STANDARD
PROCEDURE FOR CONDUCTING PRE-
EMPLOYMENT BACKGROUND CHECKS FOR CITY
EMPLOYEES.

WHEREAS, the City of Binghamton provides for pre-employment criminal background checks of new employees; and

WHEREAS, City Council wishes to implement a standard procedure for such background checks; and

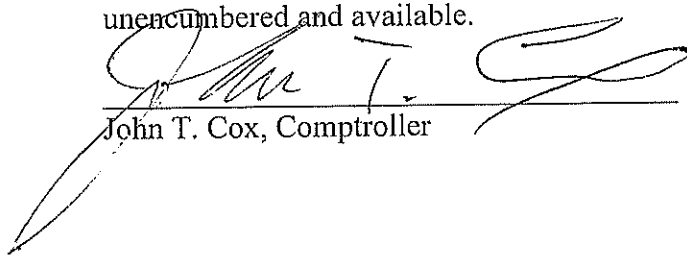
WHEREAS, funds in the amount of \$7,000 are available from budget line M1910.4478.E (Emergency Safety Rep/Imp.) for 2007 to pay for the criminal history records search.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. That the Code of the City of Binghamton, is amended to add Chapter 36 entitled "Criminal History Records Check" as attached hereto and that funds be deducted from budget line M1910.4478.E (Emergency Safety Rep/Imp.) in 2007 to pay for the criminal history records search.

Section 2. That this ordinance shall take effect immediately.

I HEREBY CERTIFY that the above described funds are unencumbered and available.


John T. Cox, Comptroller

Section 1 – Title

This Ordinance shall be referred to as “Criminal History Records Check.”

Section 2 – Criminal History Records Check Amendment of Code of Ordinances

A new Chapter 36 entitled “Criminal History Records Check” is hereby added to the City’s Code of Ordinances to read as follows:

Chapter 36

Criminal History Records Check

§ 36-1. Purpose. The purpose of this Chapter is to set forth requirements and procedures for the fingerprinting and the criminal history records check of certain prospective City of Binghamton employees in the positions set forth in Exhibit A, which is annexed hereto and made a part hereof, to determine whether such individuals will be granted a clearance for employment.

§ 36-2. Definitions. As used in this Chapter, the following terms will have the meanings indicated:

“CITY” – the City of Binghamton.

“CLEARANCE FOR EMPLOYMENT” – a determination by the Personnel Director that, based upon its review of a Prospective City Employee’s criminal history record, such individual may be employed or continue to be employed by the City, provided that all other requirements for employment are met.

“CRIMINAL HISTORY RECORDS CHECK” – will include, but is not limited to, a New York State Division of Criminal Justice Services (“DCJS”) criminal history records report, any background check performed by the Binghamton City School District, or any other background investigation established by the Personnel Director.

“PERSONNEL DIRECTOR” will mean the Director of Personnel and Safety, his/her designee, or such other City employee chiefly responsible for City personnel matters and the processing of employment applications.

“PROSPECTIVE CITY EMPLOYEE” – any individual:

- (1) who is seeking employment with the City, including re-hires; and
- (2) excluding individuals who are: (i) filling an elected position whether by election or appointment to a vacancy; (ii) serving solely as an appointed member of a board or commission of the City; (iii) considered an applicant by reason of a transfer pursuant to Civil Service Law § 70; (iv) on a preferred list subject to Civil Service Law § 81; or (v)

on an eligible list as defined in Civil Service Law § 56 and who have successfully completed a promotional exam subject to Civil Service Law § 52.

§ 36-3. Criminal History Records Check.

A. The positions set forth in Exhibit A will be subject to a Criminal History Records Check.

B. No Prospective City Employee who applies for a position listed on Exhibit A on or after August 1, 2007, will be employed by the City, other than a “conditional appointment,” prior to a criminal history records check having been performed. Any Prospective City Employee who has a criminal history that is determined to disqualify him or her from employment with the City will not be eligible for appointment to the position or be subject to immediate termination of such “conditional appointment.”

C. The City may, but shall not be required to, waive a criminal history records check for any re-hire within the last three years.

§ 36-4. City Requirements.

A. Fingerprint cards for Prospective City Employees subject to this chapter will be prepared by the City of Binghamton Police Department or other entity approved by the City’s Personnel Director to perform fingerprinting for identification processing. Two sets of fingerprint cards will be forwarded to the Personnel Director or his or her designee. Such fingerprinting procedure will be established by the City of Binghamton Police Chief and/or the Personnel Director.

B. The Personnel Director will forward the fingerprint cards and all applicable fees to DCJS for processing. The criminal history records processed by DCJS will be submitted to the Personnel Director for review regarding the prohibitions on eligibility as set forth in § 36-6 below. If the information received indicates that there is a pending criminal offense that would require a disqualification, the employee will forward documentation to the Personnel Director evidencing the disposition of such offense in accordance with the procedures established by the Personnel Director. Upon a determination of disqualification, and after review and consultation with the Corporation Counsel, as well as legal direction if necessary, the Personnel Director will notify the employee and the department head of said determination. Said notice to the employee will include information regarding the right to appeal and contest any claimed ground for disqualification in accordance with the procedures established by the Personnel Director. Any challenge to information contained in criminal records provided by DCJS will be conducted in accordance with the applicable DCJS rules and regulations.

C. The Personnel Director will establish procedures and forms for the orderly administration of this Chapter.

§ 36-5. Requirements for Prospective City Employees subject to this Chapter.

A. A City employee will consent to the Personnel Director making a request for the employee's criminal history records from the DCJS upon a form prescribed by the City which indicates that such person has:

- (i) supplied a current mailing and/or home address;
- (ii) been informed that he or she may withdraw his or her application for employment, without prejudice, or withdraw from employment at any time before employment is offered or declined, regardless of whether the employee or the City has reviewed such employee's criminal history information;
- (iii) been informed that in the event his or her employment is terminated by the City, within twelve-months of such termination such person may request the City to notify the DCJS of such termination, and request the DCJS to terminate its return processing with respect to such person.

B. Be fingerprinted for purposes of a criminal history records check by authorized personnel of the City Police Department or another pre-approved fingerprinting entity.

§ 36-6. Procedures for clearance for employment.

A. Where the criminal history records check reveals no criminal record; the Personnel Director will issue a clearance for employment or continued employment and so advise the applicable department head.

B. Where the criminal history records check reveals the Prospective City Employee was convicted of any felony or misdemeanor or has a pending felony or misdemeanor charge that would disqualify a Prospective City Employee, the Personnel Director will review such records and apply the standards for the granting or denial of employment application as set forth in NYS Correction Law Articles 23 and 23A, or as such laws may be amended or re-designated from time to time. Such review will be conducted in accordance with Executive Law § 296(16), except for prospective police officers and peace officer.

C. The City may promulgate rules and regulations regarding emergency or conditional appointment of a Prospective City Employee without a criminal history records check having been performed.

§ 36-7. Removal of criminal history file. Where individuals have been separated from employment by the City, upon request of such person within 12 months of such separation, the personnel department will notify DCJS for the purpose of terminating its return processing with respect to such employee.

§ 36-8 Fees. The City will pay the fee for the criminal history records search established pursuant to law, by DCJS, or as approved by City Council for processing the criminal history information request.

§ 36-9. No effect on collective bargaining agreements. Nothing in this Chapter will be construed or interpreted to alter or in any way diminish the integrity of collective bargaining agreements negotiated between the City and any certified or authorized collective bargaining agent nor to diminish any rights pursuant to such agreements.

Section 3 – Unconstitutionality or Illegality

If any clause, sentence, paragraph, word, section or part of this Chapter is adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment will not affect, impair or invalidate the remainder thereof, but will be confined in its operation to the clause, sentence, paragraph, word section or part thereof directly involved in the controversy in which such judgment will have been rendered.

Section 4 – Effective Date

This Ordinance will take effect immediately.

EXHIBIT A

1. School Crossing Guards

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