

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. Sommers _____

Sec'd by Ald. Ramkissoo _____

Date of Adoption: 04-21-15 _____

Index No: _____

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Kleiner				
Ald. Witt				
Ald. Johnson				
Ald. Ramkissoo				
Ald. Sommers				
Ald. Jean-Francois				
Ald. Burr				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

Introduction of Local Law #2 of 2015 Background Checks

**A LOCAL LAW TO ADD CHAPTER 173: BACKGROUND CHECKS
TO THE CODE OF THE CITY OF MIDDLETOWN**

BE IT ENACTED BY THE COMMON COUNCIL OF THE CITY OF MIDDLETOWN,
NEW YORK, AS FOLLOWS:

Section 1. Title

This Local Law shall be referred to as “A Local Law to Authorize Background Checks for Certain Positions in and Licenses Issued by the City of Middletown.”

Section 2. Purpose of this Enactment

The purpose of this enactment is to provide for the health, safety, and general welfare of the citizens of the City of Middletown through the authorization of fingerprinting and background checks for applicants who wish to be volunteer firefighters in the City or who wish to be employed by the City’s Department of Recreation. In addition, because persons who obtain peddling or solicitor permits under Chapter 353 of the Code of the City of Middletown may go door to door to conduct their business, this enactment is designed to authorize the fingerprinting and background checks of those persons who apply for such permits. This enactment also will provide for fingerprinting and background checks for applicants for taxicab licenses in the City of Middletown under Chapter 433 of the Code of the City of Middletown.

Section 3. Addition of Chapter 173: Background Checks to the Code of the City of

Middletown

Chapter 173: Background Checks is hereby added to the Code of the City of Middletown, to read in its entirety as follows:

CHAPTER 173: BACKGROUND CHECKS

Section 173-1 Purpose and Intent

The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of the City of Middletown through the authorization of fingerprinting and background checks for applicants who wish to be volunteer firefighters in the City or who wish to be employed by the City's Department of Recreation. In addition, because persons who obtain peddling or solicitor permits under Chapter 353 of the Code of the City of Middletown may go door to door to conduct their business, this enactment is designed to authorize the fingerprinting and background checks of those persons who apply for such permits.

Section 173-2 Background Checks Authorized and Required

Background checks, which include fingerprint inquiries to the New York State Division of Criminal Justice Services ("NYS DCJS") in order to access criminal history record information and other types of consumer reports, are hereby authorized and required for the following positions and licenses:

- A. Applicants who wish to become volunteer firefighters in the City of Middletown Fire Department.
- B. Applicants who wish to work in the City of Middletown Department of Recreation and who will have direct access to, or work directly with, minors.
- C. Applicants who wish to work in the City of Middletown Department of Public Works.
- D. Applicants who seek a solicitor's or peddler's permit pursuant to Chapter 353 of the Code of the City of Middletown.
- E. Applicants who seek a taxicab driver's license pursuant to Chapter 433 of the Code of the City of Middletown.

Section 173-3 Procedure for Fingerprinting and Background Checks

- A. An applicant for any of the positions set forth in Section 173-2 must be advised, in writing and in advance of any submission, that the City will require the applicant to be fingerprinted and to submit the fingerprints and any other required information to the NYS DCJS in order to access criminal history record information and to obtain a consumer report on the applicant.
- B. An applicant for any of the positions set forth in Section 173-2 must be advised, in writing and in advance of any submission, of the name and address of the reporting agency or agencies that will be providing the background check to the City.
- C. An applicant for any of the positions set forth in Section 173-2 must comply with fingerprinting requirements of NYS DCJS and pay any fees to NYS DCJS associated with the fingerprinting requirements and the background check. Notwithstanding the foregoing, the fees for fingerprints and the cost of any background check of applicants for any positions referred to in Section 173-2 A, B and C will be paid by the City of Middletown.
- D. Submission of fingerprints and payment of any applicable fees to NYS DCJS shall be in the form and manner as provided by NYS DCJS. Any costs associated with the

- same shall be paid by the applicant. Notwithstanding the foregoing, the costs associated with the fingerprints and payment of fees to NYS DCJS for applicants for any positions referred to in Section 173-2 A, B and C will be paid by the City of Middletown.
- E. The City Clerk, in conjunction with the Corporation Counsel, shall develop a stand-alone form to be signed by any applicant authorizing the City to obtain a background check on the applicant, including the applicant's criminal history record information and to obtain a consumer report on the applicant.
 - F. If an applicant is seeking an employment position with the City of Middletown Department of Recreation that will have direct access to, or work directly with, minors and the annual salary for the job is less than \$25,000.00, then the background check may only report criminal convictions that occurred in the previous seven years. If an applicant is seeking an employment position with the City of Middletown Department of Recreation that will have direct access to, or work directly with, minors and the annual salary for the job is more than \$25,000.00, then the background check may report all criminal convictions of the applicant.
 - G. All requests for background checks and consumer reports for any applicant must comply with the requirements of the Federal Fair Credit Reporting Act (15 U.S.C. § 1681), New York's Fair Credit Reporting Act (Article 25 of the New York General Business Law), Article 23-A of the New York Correction Law, New York Executive Law § 296 (16), and any other applicable federal or state law or successor law to any of the aforementioned laws.
 - H. An applicant for any of the positions set forth in Section 173-2 must be provided with a copy of Article 23-A of the New York Correction Law prior to the City requesting criminal background check on an applicant.

Section 173-4 Review of Background Checks

- A. Background checks, including criminal history record information, obtained on an applicant for any of the positions set forth in Section 173-2 are to be reviewed as follows:
 - 1. Background checks for applicants who wish to become volunteer firefighters in the City of Middletown Fire Department are to be reviewed by the Fire Chiefs in conjunction with the Chief of Police or his designee.
 - 2. Background checks for applicants who wish to work in the City of Middletown Department of Recreation and who will have direct access to, or work directly with, minors are to be reviewed by the Superintendent of Recreation in conjunction with the Chief of Police or his designee.
 - 3. Background checks for applicants who wish seek a solicitor's or peddler's permit pursuant to Chapter 353 of the Code of the City of Middletown are to be reviewed by the City Clerk in conjunction with the Chief of Police or his designee.
 - 4. Background checks for applicants who seek a taxicab driver's license pursuant to Chapter 433 of the Code of the City of Middletown are to be reviewed by the Chief of Police or his designee.
- B. Applications for any of the positions or licenses as described in Section 173-2 may be denied based on the results of the background check only if (1) there is a direct relationship between the criminal offense committed and the employment sought. A "direct relationship" exists if the nature of the criminal conduct directly bears on the fitness or ability of the applicant to perform the duties or responsibilities of the job; or 2) if the applicant would pose an unreasonable risk to property or the safety or

welfare of others. This includes a risk to specific individuals or the general public.

- C. In determining whether or not an application may be denied based on the results of the background check, the reviewing authority must consider the following factors:
1. The public policy of New York State to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
 2. The specific duties and responsibilities necessarily related to the license or employment sought.
 3. The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
 4. The time which has elapsed since the occurrence of the criminal offense or offenses.
 5. The age of the person at the time of occurrence of the criminal offense or offenses.
 6. Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
 7. The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.
 8. In addition, the reviewing authority shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.
 9. The reviewing authority must consider each applicant on a case-by-case basis after reviewing all of the above factors and should attempt to verify the accuracy of the information contained in the background check with the applicant.
 10. If the reviewing authority chooses to deny the applicant employment, or a position with the City, or a license because of the results of the background check, the applicant is entitled to a written statement giving the reasons for this denial, which must be provided to the applicant within thirty days of the applicant's request along with a second copy of Article 23-A of the New York Correction Law.

Section 173-5 Right of Appeal

- A. In the event the reviewing authority chooses to deny the applicant employment, or a position with the City, or a license because of the results of the background check, the reviewing authority shall notify the applicant in writing of such denial, and the individual shall have the right to request a hearing before the Corporation Counsel.
- B. Any request for a hearing must be made by the applicant within twenty calendar days after receiving written notice of the denial from the reviewing authority. Failure to request a hearing within such twenty day period shall be deemed a waiver of the applicant's right to file an appeal.
- C. Upon receiving a timely request for a hearing, the Corporation Counsel, as hearing officer, shall set a time and a place for a hearing. The applicant shall have the option of whether such hearing shall be public or private.

- D. At the time of the hearing, the applicant shall be given an opportunity to present evidence, including the testimony of third party witnesses, why such denial of the application should be reversed. The reviewing authority may also present evidence as to why the denial of the application should be sustained. The applicant may be represented by an attorney or may represent him or herself at the hearing.
- E. The Corporation Counsel, as hearing officer, shall hear the evidence and testimony as presented by the applicant and the reviewing authority. Upon consideration of the evidence presented, the Corporation Counsel, as hearing officer, will issue a written decision which may sustain or reverse the decision of the reviewing authority to deny the application.
- F. In the event the applicant is not satisfied with the decision of the Corporation Counsel as hearing officer, the applicant may file an Article 78 proceeding pursuant to the New York CPLR, except that such Article 78 proceeding must be filed within thirty days of the filing of the Corporation Counsel's decision with the City Clerk of the City of Middletown and service of the same upon the applicant.

Section 173-6 Privacy

Any and all criminal background checks supplied to the reviewing authority shall be filed and maintained in a secure and locked cabinet under the custody of the Chief of Police or his designee and shall not be available to the public. Such records shall be exempt from public disclosure under the New York Freedom of Information Law. The records shall only be retained for such period of time as necessary for the reviewing authority to review the background check for compliance with this chapter. The records shall be destroyed after an applicant is deemed qualified by the reviewing authority. In the event the reviewing authority determines an applicant's application is denied, that individual's background check records shall not be destroyed until and unless the applicant exhausts all available appeal rights, administratively and through court.

Section 4. Severability of Provisions.

Should any section or provision of this Local Law be declared, ordered or adjudged null, void, voidable or invalid by a court of competent jurisdiction, such finding of invalidity shall not affect the validity of the remaining portions of this Local Law.

Section 5. Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State.