

**BACKGROUND INVESTIGATIONS
OF TOWN EMPLOYEES**

Local Law No. 5-2001

**A Local Law Providing for Background Investigations
For All Town Employees of the Town of Kirkwood
Who Will Handle Town Monies By Reason of Such Employment**

Adopted March 6, 2001

Be it enacted by the Town Board of the Town of Kirkwood as follows:

SECTION 1: The following persons employed by the Town of Kirkwood (hereinafter the "Town) after the effective date of this Local Law in a position, either as a Town Officer or Town Employee, other than as a duly elected Town Officer, who shall have moneys belonging to the Town coming into his or her hands by virtue of such employment or by reason of custody of petty cash funds, shall be subject to a background investigation to determine the suitability of such applicant for employment:

- Assessor
- Board of Assessment Review Chairperson
- Bookkeeper
- Building & Code Inspector
- Deputy Buildings & Code Inspector
- Deputy Tax Collector
- Deputy Town Clerk
- Planning Board Chairperson
- Recreation Supervisor
- Secretary to Commissioner of Public Works
- Secretary to Supervisor
- Town Court Clerk
- Zoning Board of Appeals Chairperson

Such investigation shall include, but not be limited to, the taking of fingerprints of such prospective employees as a prerequisite for employment.

SECTION 2: Upon receipt of an application for any such employment, the Town Supervisor shall, subject to the rules and regulations of the Division of Criminal Justice Services, initiate a criminal history record check of the person making application. Prior to initiating the fingerprinting process the Supervisor shall furnish the applicant with the form described in Section 5 of the Local Law and shall obtain the applicant's consent to the criminal history record check. The Supervisor shall obtain from each applicant a set of fingerprints and the Supervisor shall promptly transmit such fingerprints and the Division of Criminal Justice Services processing fee imposed pursuant to subdivision eight-a of Section eight hundred thirty-seven of the Executive Law for its full search and retain processing. The Division of Criminal Justice Services shall forward such criminal history record to the Supervisor in a timely manner.

SECTION 3. All such criminal history records processed and sent pursuant to this subdivision shall be confidential pursuant to the applicable federal and state laws, rules and regulations and shall not be published or in any way disclosed to persons other than the Supervisor unless otherwise authorized by

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Law. No cause of action against the Town or the Division of Criminal Justice Services for damages related to the dissemination of criminal history records pursuant to this subdivision shall exist when the Town or Division of Criminal Justice Services has reasonably and in good faith relied upon the accuracy and completeness of criminal history information furnished to it by qualified agencies. The provision of such criminal history record by the Division of Criminal Justice Services shall be subject to the provisions of subdivision sixteen of Section two hundred ninety-six of the Executive Law. The Supervisor shall consider such criminal history record pursuant to Article twenty-three-A of the Corrections Law.

SECTION 4. The Town Supervisor, in consultation with the Division of Criminal Justice Services and in accordance with all applicable provisions of law, shall promulgate rules and regulations for the use of information derived from a search of the records of the Division of Criminal Justice Services based on the submission of such fingerprints. The Town Supervisor shall also develop a form for use by the Town in connection with the submission of fingerprints that contains a specific job title sought and any other information that may be relevant to consideration of the applicant.

SECTION 5. The Town Supervisor, in consultation with the division of Criminal Justice Services, shall:

- A. Promulgate a form to be provided to all such prospective Town Officers or employees that shall:
 - (i) inform the prospective officer or employee that the Supervisor is required to request his or her criminal history information from the Division of Criminal Justice Services and review such information pursuant to this section, and provide a description of the manner in which his or her fingerprint cards will be used upon submission to the Division of Criminal Justice Services;
 - (ii) inform the prospective Officer or employee that he or she has the right to obtain, review and seek correction of his or her criminal history information pursuant to regulations and procedures established by the Division of Criminal Justice Services;
 - (iii) inform the prospective Officer or employee that his or her failure to consent to such a criminal history investigation shall be deemed a disqualification for appointment to the office or employment for which the person has applied.
- B. The Town Supervisor shall obtain the signed informed consent of the prospective employee on such form which indicates that such person has:
 - (i) been informed of the right and procedures necessary to obtain, review and seek correction of his or her criminal history information;
 - (ii) been informed of the reason for the request for his or her criminal history information;

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- (iii) consented to such request for a report
- (iv) supplied on the form a current mailing or home address for the prospective employee;
- (v) been informed that he or she may withdraw his or her application for employment pursuant to this section, without prejudice, at any time before employment is offered or declined, regardless of whether the prospective employee's criminal history information;
- (vi) been informed that pursuant to Corrections Law Section 752 his application for employment shall be denied by reason of the applicant's having been previously convicted of one or more misdemeanors or felonies or by reason of a lack of "good moral character" when there is a direct relationship between one or more of the previous criminal convictions and the specific employment sought or the granting of such employment would involve an unreasonable risk to property of the Town or to the safety or welfare of specific individuals or the general public.
- (vii) been informed that in making a determination under paragraph (vi) the Town Supervisor shall consider the various factors set forth herein in Corrections Law Section 753 and shall also give due consideration to a Certificate of relief from disabilities or a certificate of good conduct Previously issued to the applicant pursuant to Corrections Law Article 23.
- (viii) been informed that in the event his or her employment is terminated, the Town Supervisor shall notify the Division of Criminal Justice Services Of such termination, and the Division of Criminal Justice Services shall Destroy the fingerprints of such person.

SECTION 6: When the Town Supervisor determines that employment should be denied by reason of information obtained from the applicant's criminal record history, the applicant shall be afforded written notice thereof, within 30 days of the request, and the right to be heard and offer proof in opposition to such determination.

SECTION 7: If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any Court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Kirkwood hereby declares that it would have passed this Local Law or the remainder thereof, had such invalid application or invalid provision been apparent.

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SECTION 8: All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

SECTION 9: This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.