

11-B



City of Miami Springs Interoffice Memo

DATE: September 23, 2011

TO: Mayor Xavier Garcia and Members of the City Council

FROM: James R. Borgmann, City Manager *JRB*

RE: Discussion Regarding the Need to Conduct and Verify Background Checks for all Organizations using City Facilities involving Children under the Age of Eighteen

Certainly, as a sign of the times we live in, we must assure parents and children who participate in programs conducted on city property that they are doing so in a safe and secure environment. As part of that effort, we screen all full and part time workers, and volunteers, who work at the community center.

This leaves a large gap, however, between the city and those organizations that sponsor programs at our facilities. These organizations usually have a similar background screening requirement from their national organization and do, in fact, require their coaches and volunteers go through the screening process.

In an effort to further allay the fears of parents whose children participate in these various activities, we have requested lists of those individuals who passed the background screening provided by the sponsoring organization. We have met resistance in the past when these requests have been made. We certainly understand the need to protect the privacy of individuals, but all we ask for is a list of the individuals who have passed the screening. In the interest of privacy, we are not interested in those that did not pass.

We are now at a point where stall believes we have no choice but to require the production of a list of those individuals that have passed the screening through the various organizations. **We should insist that the City receive this list prior to the first practices or games at our facilities.** This will be easier said than done and will most certainly require the support of all parties to be successful.

Agenda Item No. *11-B*

City Council Meeting of:

SEPT. 26, 2011

From Omar Luna, Recreation Director:

Attached is a copy of the Youth Sports Organization Volunteer Program Policy from the City of Homestead which could serve as a template for Miami Springs. This document was generated by the Police Department and Risk Manager. Here is some information we can probably use:

Youth Sports Organization (YSO) shall comply with the City Youth Sports Organization Volunteer Program Policy, attached as Exhibit "C" and made a part hereof, for the purpose of conducting background investigations for all coaches, managers, officials, umpires, members, employees, and/or volunteers or participants ("Volunteers") associated with the operation of programs and/or activities for the YSO.

YSO may select a professional vendor and/or organization of their choosing, with all costs to be borne by the YSO, for the purpose of conducting of said background investigations; however, required background investigations shall be completed in accordance with the Volunteer Program Policy and with the cooperation of the Miami Springs Police Department.

It is recommended that YSO select one (1) YSO official to confidentially process and receive information regarding the background investigations, and if requested by the YSO, the Director of the City's Department of Parks and Recreation shall be the City's designated person to contact and advise persons with negative background investigations that he/she may not participate in YSO programs and/or activities.

All Volunteers shall receive and maintain Volunteer Certification in accordance with the Volunteer Program Policy which shall require completion of the City Volunteer Course and satisfaction of all criminal background investigation requirements.

The City will consider timeframes of each YSO in determining dates of certification classes and establishing deadlines for participation. At least (15) days prior to the start of the season, the YSO shall provide the City with a list of all participants, Members and/or YSO Volunteers or other participants that are allowed to participate/volunteer in the YSO. The YSO shall keep the City continuously updated of any changes to the list.

EXHIBIT "C"

CITY OF HOMESTEAD **YOUTH SPORTS ORGANIZATION VOLUNTEER PROGRAM** **POLICY**

The City of Homestead ("City") and members of youth sports organizations, associations, or corporations ("YSO") utilizing City-owned property and facilities desire to protect the safety and welfare of children. All YSO's utilizing City-owned properties or facilities pursuant to a Use Agreement for activities involving children under the age of eighteen (18) shall comply with the requirements of this policy and perform the responsibilities set forth below.

All persons eighteen (18) years of age or older including, but not limited to, all coaches, umpires, managers, officials, members, employees, volunteers, or assistants ("Volunteer") associated in any manner with the operation of programs and/ or activities of any YSO utilizing City-owned properties or facilities pursuant to a Use Agreement as described above shall participate in the Youth Sports Organization Volunteer Program and receive and maintain Volunteer Certification from the City in accordance with this policy. All volunteers shall be required to attend and complete the City of Homestead Volunteer Course, and shall comply with and satisfy all criminal background investigation requirements as set forth in this policy.

YSO and Volunteer compliance with this police shall be a condition precedent to use of any property or facility owned, managed or operated by the City.

A. CITY OF HOMESTEAD VOLUNTEER COURSE

The City shall offer and conduct, a two-hour Volunteer Course covering topics such as codes of conduct, sportsmanship, safety rules, and the purpose of involvement with respective programs. The Volunteer Course shall be offered on (dates to be determined) and all Volunteers desiring to participate in activities associated with their respective YSO upon City-owned facilities or properties in any manner shall attend and complete the Volunteer Course.

Upon completion of the Volunteer Course, the City shall issue to the Volunteer an attendance certificate which shall remain valid for two (2) years from issuance date.

B. CRIMINAL BACKGROUND INVESTIGATION

All Volunteers are required to consent to and undergo criminal background investigations in accordance with the terms of this policy. Background investigations shall be conducted on an annual basis and shall be completed prior to the start of seasonal play and/ or practice for the same.

Each YSO shall be responsible for conducting required annual background investigations for all associated Volunteers and shall submit the results of each investigation to the City in accordance with this policy. Background investigations shall be conducted either by the City of Homestead Police Department or a professional organization accredited and/ or recognized for

such work and approved in advance by the City. Additionally, some YSO's conduct background investigation procedures mandated by their affiliation in larger sports organizations. Upon receiving advance approval from the City, those YSO's may have their criminal background investigations processed by those larger organizations if the investigation includes a state and national criminal background investigation including a search of the Sexual Predator/Offender database maintained by the Florida Department of Law Enforcement ("FDLE").

Background investigations shall include the following:

- a. Statewide criminal and juvenile background investigation
- b. Federal criminal investigation
- c. Social security verification
- d. Search of Sexual predator/ Offender database maintained by the FDLE

A Volunteer may be disqualified from participating in any manner upon City-owned, operated or managed facilities or properties if found guilty, regardless of adjudication, entering of a plea of nolo contendere or guilty of any of the following offenses prohibited under any of the following provisions of the Florida Statutes, or similar offenses of another jurisdiction:

***The list of offenses is not intended to be all-inclusive

- (a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting such sexual misconduct.
- (b) Section 394.4593, relation to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- (c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- (d) Section 782.04, relating to murder.
- (e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (f) Section 782.071, relating to a vehicular homicide.
- (g) Section 782.09, relating to killing of an unborn child by injury to the mother.
- (h) Section 784.011, relating to assault, if the victim of the offense was a minor.
- (i) Section 784.021, relating to aggravated assault.
- (j) Section 784.03, relating to battery, if the victim of the offense was a minor.
- (k) Section 784.045, relating to aggravated battery.
- (l) Section 784.075, relating to battery on a detention or commitment facility staff.

- (m) Section 787.01, relating to kidnapping.
- (n) Section 787.02, relating to false imprisonment.
- (o) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- (o) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- (q) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- (r) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- (s) Section 794.011, relating to sexual battery.
- (t) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (u) Chapter 796, relating to prostitution.
- (v) Section 798.02, relating to lewd and lascivious behavior.
- (w) Chapter 800, relating to lewdness and indecent exposure.
- (x) Section 806.01, relating to arson.
- (y) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (z) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (aa) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult
- (aa) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (cc) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- (dd) Section 826.04, relating to incest.
- (ee) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- (ff) Section 827.04, relating to contributing to the delinquency or dependency of a child.
- (gg) Former s. 827.05, relating to negligent treatment of children.

- (hh) Section 827.071, relating to sexual performance by a child.
- (ii) Section 843.01, relating to resisting arrest with violence.
- (jj) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- (kk) Section 843.12, relating to aiding in an escape.
- (ll) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- (mm) Chapter 847, relating to obscene literature.
- (nn) Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.
- (oo) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- (pp) ¹Section 916.0175, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- (qq) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- (rr) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
- (ss) Section 944.47, relating to introduction of contraband into a correctional facility.
- (tt) Section 985.701, relating to sexual misconduct in juvenile justice programs.
- (uu) Section 985.711, relating to contraband introduced into detention facilities.

A conviction of a criminal offense does not automatically preclude employment or volunteer service; however, a Volunteer **shall** be disqualified if a background investigation (1) reveals a conviction for child abuse, abandonment or neglect, spousal abuse, crimes against children including child pornography, crimes involving violence, including rape, sexual assault, or homicide; or (2) reveals a conviction for physical assault, battery, or drug-related offense, if the felony was committed within the past five (5) years.

Based upon the results of the individual background investigation, each YSO shall make a determination as to the eligibility of each proposed Volunteer. Discretion shall be exercised in a uniform manner so that similar conviction and circumstances result in similar treatment. The YSO shall notify all Volunteers of the YSO's determination within five (5) days of completion of the background investigations.

Volunteers deemed ineligible to participate may appeal to the respective YSO provided the following criteria is satisfied; 1) respective civil rights have been restored by the State of Florida, and 2) no violations have occurred for the past ten (10) years.

C. PROCEDURES FOR VOLUNTEER CERTIFICATION

At least fifteen (15) days prior to start of season play and/or practices for the same, each YSO shall submit to the City the following terms:

1. An affidavit listing all proposed Volunteer certifying that the YSO has complied with this policy, completed background investigation on all named Volunteers, and a statement that all named Volunteers are deemed eligible by the YSO to participate in the Youth Sports Organization Volunteer Program.
2. A Volunteer Application for each Volunteer including the results of the background investigation and a copy of the attendance certificate verifying completion of the Volunteer Course.

Upon review of the above referenced Volunteer information, the City shall have the authority to overrule the determination of eligibility made by the YSO for individual Volunteers. Should the City determine that any Volunteer is ineligible to participate, the City shall provide each YSO a list of all disqualified Volunteers within five (5) days of receipt of the Volunteer information. Discretion shall be exercised in a uniform manner, so that similar convictions and circumstances result in similar treatment. Volunteers deemed ineligible to participate by the City may appeal to the City of Homestead, Department of Parks and Recreation provided the following criteria is satisfied: 1) respective civil rights have been restored by the State of Florida, and 2) no violations have occurred for the past ten (10) years. Notification of any and all successful appeals shall be delivered in writing to the YSO no later than fifteen (15) days following such action.

The City shall issue all eligible Volunteers picture identification cards ("Volunteer Card") verifying Volunteer Certification subject to the following conditions:

- Volunteer Cards shall be valid for twelve (12) months from the date of issuance.
- Background investigations shall be conducted yearly.
- The City reserves the right to revoke individual Volunteer Certification based on investigation and review of conduct deemed inappropriate for Volunteers.
- Volunteer Cards shall be carried at all times while volunteering and Volunteers shall, upon request, present their Volunteer cards to any City or YSO official.
- Should any Volunteer be confirmed as eligible for participation and later be arrested or convicted of any crimes or violations as noted above, they shall notify their respective YSO's whom shall immediately remove said Volunteer until the case is adjudicated. Failure to notify respective YSO shall result in the automatic revocation of Volunteer Certification, regardless of the legal outcome.

D. ADDITIONAL RESPONSIBILITIES

- The City may at any time conduct random certification checks. If any time a team/activity is found to be without a certified Volunteer, said activity will immediately be terminated and may resume once a certified Volunteer assumes responsibility of the activity. In the event an activity is found to be without a certified Volunteer, the YSO will be notified in writing of the violation.
- If the YSO is found to be in violation of this policy in excess of three (3) times during one season; the City may, in its sole discretion, demand that the chief officer of the YSO be replaced prior to renewal or execution of the forthcoming agreement. Additionally, the City may, in its sole discretion, require that any future contracts with said YSO be issued on a probationary status. If said YSO is involved in any violations during their probationary period, said YSO authorization for use of City facilities shall be terminated. If the YSO successfully completes a year of probation without any violations, said YSO may be returned to normal status for the next conducted period.
- Prior to the first game of the season the YSO shall provide the City with a copy of each team roster specifying the team name, uniform color, and the names, addresses and phone numbers of all team Volunteers. The YSO shall also provide copies of all Volunteer Cards. Each YSO shall maintain a current and accurate roster of all Volunteers and shall notify the City immediately upon any change in the roster or change in status of any Volunteer. Please note the identification of the participants under the age of 18 shall be in accordance with the YSO agreement.
- **YSO shall assume all legal responsibility for managing a system to ensure policy compliance with regard to required background investigations and Volunteer Certification, and accuracy of the rosters, lists, and any other required information on file with the City.**