

1. Requested Motion:

Meeting Date: Nov 7, 2011

Approve the Volunteer Criminal Background Screening Administrative Policy effective 11/8/2011.

Why the action is necessary:

This action will make clear the Town's position on safety for our volunteers, participants, island residents and visitors.

What the action accomplishes:

This policy requires that all volunteers having any possible contact with youth, special needs individuals, seniors and vulnerable adults complete and pass a criminal background screening prior to assigning that person any volunteer duties.

2. Agenda:

Consent
 Administrative

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. Background:

The Town of Fort Myers Beach instituted a requirement that all volunteers be required to pass a criminal background screening. A number of our current volunteers objected to the new requirements and the item has been referred to the Town Council for review. While the Town appreciates our volunteers, we also value the safety of those who use our parks, recreational and cultural resources and facilities. To this end, we strive to take sound measures to protect our employees, volunteers, and those we serve from potential harm.

Attachments: Volunteer Criminal Background Screening Policy
 Consent Form
 Letter from TOPS, the Town's background check contractor
 Memo from Michelle Mayher, Town Clerk regarding protected information
 Memo from Marilyn Miller, Town Attorney regarding Florida Statutes #

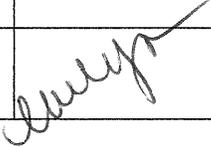
6. Alternative Action:

None

7. Management Recommendations:

Approve and implement Volunteer Criminal Background Screening Administrative Policy with an effective date of November 8, 2011.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

Town of Fort Myers Beach
Volunteer Criminal Background Screening Policy

- I. Policy
- II. Guidelines for Volunteer Criminal Background Screening
 - a) Contents of Criminal Background Screening
 - b) Application
 - c) Confidentiality Statement
- III. Criteria for Disqualifying Volunteer
- IV. Appeals Process

I. Purpose of the Volunteer Criminal Background Screening

Volunteer service is a way to give back to the community as well as gain valuable experience for the future. The Town of Fort Myers Beach appreciates our volunteers because they contribute their time, knowledge, enthusiasm, talents and past experiences to aid in enhancing the programs and services we offer to the community.

The Town also values the safety of those who use our parks, recreational and cultural resources and facilities. To this end, we strive to take sound measures to protect our employees, volunteers, and those we serve from potential harm.

We have special regard for children, vulnerable adults and individuals with special needs, who trust in our ability to provide them with wholesome, safe recreational and cultural experiences. One specific measure is to perform background checks on employees and volunteers who have contact with program participants.

In order to protect participants in the Town of Fort Myers Beach programs and protect the integrity of the Town, the following Volunteer Background Check Policy has been adopted.

It will be the responsibility of the department head or his/her designee to ensure that all volunteers who may have any contact with youth, special needs individuals and/or any vulnerable adults submit to the criminal background screening.

Council appointed boards, committees and commissions and elected officials will not be subjected to the criminal background screening.

II. Guidelines for Volunteer Criminal Background Screening

- A. The screening process will begin with each potential volunteer being advised that the criminal background screening will be completed. Copies of the policy, guidelines, criteria for disqualification and appeals process will be provided to each individual for their review prior to submittal for the screening.
 - Social Security Verification: each potential volunteer's name should be verified by the social security number that they provide. Verifying the social security number for the individual is the critical first step to obtaining accurate

information, including the name provided and data such as the year and state that the SSN was issued and previous addresses.

- Address Trace: the current address of any potential volunteer should be verified and any previous addresses should also be determined. The verification of addresses is critical to determine what local searches should be completed.
- State and County Criminal Record Check: a statewide and countywide criminal records check will be conducted to examine any misdemeanors or felony convictions within the jurisdictions. (note: County only)
- National Criminal History Database Search: National records checks should be utilized to supplement the local criminal history search and vice versa. Both the local and national search will be conducted. (delete)
- Sex Offender Registry: Appropriate state sex offender registries should be included in the background screening process. All states in which the potential volunteer resided will be included in this search.

B. Each potential volunteer will be required to complete a Volunteer Application form. The application includes the following:

- 1) Name of Volunteer applicant
- 2) Current Address and number of years at that address
- 3) Previous Addresses and number of years at each
- 4) Social Security number
- 5) Driver's License number
- 5) Date of Birth

The application will include a consent form to conduct the criminal background check which must be signed and dated by the potential volunteer as part of the application process. The consent form will state the specific details as to what will be researched in the criminal background screening process. The signed application and consent form will be forwarded to the Finance Department who will arrange for the screening. The results of the criminal background screening will be received and maintained by the Town of Fort Myers Beach Finance/Human Resources Department. The department submitting the application on behalf of the potential volunteer will only receive a "Pass" or "Fail" notification from the Finance/Human Resources Department.

C. The Town of Fort Myers Beach hereby establishes a Confidentiality policy that states the respect for the privacy of the individual and outlines how the information from the criminal background screening will not be disseminated to any others outside of the organization unless required by law.

III. Criteria for Disqualifying a Volunteer

The Finance Department will provide the disqualified volunteer applicant a letter of disqualification and a copy of the actual screening report.

Any potential volunteer shall be disqualified and prohibited from participating as a volunteer in any Town funded or managed activities or programs as a volunteer if the person has been found guilty* of any of the following :

Sex Offenses

Any/All Sex Offenses (lifetime ban)
Regardless of the amount of time since the offense

Felonies

Any/All Felonies involving violence (lifetime ban)
Regardless of the amount of time since the offense

Drug Distribution Offenses (lifetime ban)

Any/All Drug Distribution Offenses
Regardless of the amount of time since the offense

Any/All Felony offenses other than those previously listed

Within the previous 10 years

Misdemeanors

Any/All misdemeanors involving violence within the past 7 years

Any other misdemeanor within the past 5 years that would be considered a potential danger to children or other vulnerable citizen or is directly related to the responsibilities of that volunteer position.

Examples include: contributing to the delinquency of a minor, providing alcohol to a minor

If the potential volunteer has any pending cases in court or has been charged for any of the disqualifying offenses, they will not be allowed to volunteer their services until the case has been resolved and a verdict determined.

**Guilty is defined as: being found guilty following a trial, entering a guilty plea, entering a no contest plea accompanied by a court finding of guilty, regardless of whether there was an adjudication of guilt (conviction) or a withholding of guilt.*

IV. Appeals Process

If an individual is disqualified from volunteering their services, based on the above criteria, and they dispute the accuracy of the information provided in the Background Screening, they may address their concerns with the investigative agency that provided the information. The Town of Fort Myers Beach is not involved in the investigation and research of criminal records and is not responsible for the accuracy of the background reports. If the individual is disqualified and can provide a written copy of a correction to the report, that the investigative agency has approved, then the Town will allow the individual to appeal the decision. (delete)

The appeals process begins with a written request from the volunteer, which must be

submitted within (30) days of notification of disqualification to the Town of Fort Myers Beach Finance/Human Resources Department. A panel consisting of the Town Manager, Town Attorney and Finance/Human Resources Director will review the written appeal and the disputed information and schedule an appeal hearing with the individual. The panel will make a decision based on factual information provided during the hearing. The volunteer applicant will receive a written notification from the Finance/Human Resources Department of the decision, including decisions made in favor of the applicant or denial to overturn the disqualification. Once the decision has been made and the applicant notified, no additional appeal hearings will be conducted.

Contents of this policy or process are subject to change based on current and future laws. The Town of Fort Myers Beach reserves the right to make changes to the Volunteer Criminal Background Screening Policy when necessary to ensure the safety and protection of all youth, special needs individuals and vulnerable adults who are involved or participating in city funded or city managed activities or programs.



Good Afternoon Amanda,

I understand the concerns expressed, however the package you usually requests is the 7-Year County Criminal Search, in which a Social Security Trace locates the counties the applicants have resided in for the past seven years. Then, a physical courthouse search is conducted in each county based on the name, date of birth and social security number for identification purposes, i.e., if someone comes back with a record simply based on the name and date of birth, there is a high chance for your applicant to receive a background check that is inaccurate because the main identifier is the social security number, and also it is needed for the Trace. Our company has been in business for over 25 years, we are audited every year by the state of FL to ensure we are compliant with the Fair Reporting Act guidelines. We ensure every release that contains sensitive information is locked and purged after 7 years (per guidelines). I understand the concerns about giving out the socials but for the searches that you request, it is a needed criterion.

Please let me know if I can assist you any further.

Sincerely,

Sara S. Decicco
Operations Manager
TOPS HR Solutions
941/366-7570
sdecicco@topshr.com
www.topshr.com

****CONFIDENTIALITY STATEMENT****

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Release of Information

I, the undersigned, so hereby authorize TOPS HR Solutions to conduct a criminal background investigation on me, for the purpose of determining my suitability for volunteering.

This authorization is for the release of any and all information pertaining to me, including but not limited to the following:

Law enforcement agencies, military authorities, motor vehicle bureaus, institutions, and courts of law.

HOLDS HARMLESS RELEASE

I hereby consent to this background investigation and *release and hold harmless* TOPS HR Solutions employees/agents, law enforcement agencies and state and federal agencies that shall provide information to TOPS HR Solutions, upon request, for and again any and all claims, suits, or expenses arising from or related to the content, validity, or handling of said reports.

Name (Printed)

SSN

Maiden Name/Former Name

Date of Birth

Driver's License # State

Current Address City State Zip

Previous Address City State Zip

Signature of Applicant

Today's Date



Town of Fort Myers Beach

Memorandum

To: Evelyn Wicks, Director of Finance

From: Michelle Mayher, Town Clerk 

Date: October 20, 2011

Re: Exemptions from Disclosure

The Town may be required to produce records that contain personal information in accordance with Public Records Law. Florida Statute 119.071 sites general exemptions from inspection or copying of public records. FS: 119.071 (4)(a) states that the social security numbers of all current and former employees and volunteers are confidential and exempt from disclosure and will be redacted. Other personal information may be statutorily exempt and are outlined in FS: 119.071(4). It is the obligation of the individual to notify the Town of any exemptions that may exist beyond the social security numbers.

Memorandum

TO: Mayor and Town Council
FROM: Marilyn W. Miller *MWM*
DATE: October 26, 2011
RE: Criminal Background Checks for Volunteers

At the last Town Council meeting, the issue of background checks for Town volunteers was discussed. During that discussion, I made you aware of a Florida Statute that provides entities such as the Town with protection against claims of negligent hiring. That statute is Section 768.096, Florida Statute. A copy is attached for your convenient reference.

Basically, that statute provides for a presumption against negligent hiring where the employer conducts criminal background investigations of its employees. For purposes of claims for negligent hiring, volunteers would be considered to be employees of the Town. The type of background check required by the statute is a basic criminal background investigation consisting of a check, through the Florida Department of Law Enforcement, of the information as reported and reflected in the Florida Crime Information Center system.

If the Town elects not to perform criminal background investigations of its volunteers, then there is potential liability for negligent hiring in the event a Town volunteer, while performing services for the Town, commits a criminal act that causes harm to a member of the public.

If you have any questions concerning the foregoing, please do not hesitate to contact me.

Attachment

Cc: Terry Stewart, Town Manager
Evelyn Wicks, Finance Director

Select Year: 2011

The 2011 Florida Statutes

[Title XLV](#)
TORTS

[Chapter 768](#)
NEGLIGENCE

[View Entire Chapter](#)

768.096 Employer presumption against negligent hiring.—

(1) In a civil action for the death of, or injury or damage to, a third person caused by the intentional tort of an employee, such employee's employer is presumed not to have been negligent in hiring such employee if, before hiring the employee, the employer conducted a background investigation of the prospective employee and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the prospective employee for the particular work to be performed or for the employment in general. A background investigation under this section must include:

- (a) Obtaining a criminal background investigation on the prospective employee under subsection (2);
- (b) Making a reasonable effort to contact references and former employers of the prospective employee concerning the suitability of the prospective employee for employment;
- (c) Requiring the prospective employee to complete a job application form that includes questions concerning whether he or she has ever been convicted of a crime, including details concerning the type of crime, the date of conviction and the penalty imposed, and whether the prospective employee has ever been a defendant in a civil action for intentional tort, including the nature of the intentional tort and the disposition of the action;
- (d) Obtaining, with written authorization from the prospective employee, a check of the driver's license record of the prospective employee if such a check is relevant to the work the employee will be performing and if the record can reasonably be obtained; or
- (e) Interviewing the prospective employee.

(2) To satisfy the criminal-background-investigation requirement of this section, an employer must request and obtain from the Department of Law Enforcement a check of the information as reported and reflected in the Florida Crime Information Center system as of the date of the request.

(3) The election by an employer not to conduct the investigation specified in subsection (1) does not raise any presumption that the employer failed to use reasonable care in hiring an employee.

History.—s. 16, ch. 99-225.

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