

ORDINANCE NUMBER 18-2021

FIRST READING/  
INTRODUCTION: October 12, 2021

SECOND READING/  
PUBLIC HEARING/  
ADOPTION: November 10, 2021

ORDINANCE

BOROUGH OF EAST NEWARK  
COUNTY OF HUDSON, STATE OF NEW JERSEY

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 2, SECTION 19 OF THE MUNICIPAL CODE OF THE BOROUGH OF EAST NEWARK, IN THE COUNTY OF HUDSON, STATE OF NEW JERSEY, TITLED "POLICE DEPARTMENT", SPECIFICALLY BY CREATING SECTIONS REGARDING EXTRA DUTY WORK DETAILS

**WHEREAS**, it is recognized that there are times when police officers are sought by private employers or other public entities to provide security and/or traffic control services that are outside the scope of their regularly scheduled duties and responsibilities for public safety interests and concerns of the Borough: and,

**WHEREAS**, while allowing police officers to work off-duty outside work assignments within the Borough may be advantageous to the residents of the Borough by deferring costs that might otherwise have to be paid with taxpayer funds, it also exposes the Borough to potential liability that would not be in the best interests of the Borough, and

**WHEREAS**, while the Borough of East Newark is desirous of allowing its police officers the opportunity to earn additional compensation by working off-duty outside work assignments, the Borough must insulate itself from potential third-party complaints and/or liabilities arising from injuries or accidents which may be sustained as the result of Borough police officers working off-duty, outside work assignments:

**NOW THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of East Newark, County of Hudson, State of New Jersey that Chapter 2, Section 19, of the Borough's Ordinances, is hereby supplemented by adding a section to provide regulations concerning the employment of police officers for "Extra-Duty" Details, as follows:

**Section 1. Findings.**

A. N.J.S.A. 40A:14-118 provides that the governing body of any municipality may, by ordinance, create and establish a police force and provide for the regulation and control thereof; provide for the adoption and promulgation of rules and regulations of the police force; provide for the appointment of officers and personnel as shall be deemed necessary, and prescribe their powers functions and duties.

**B.** There are numerous occasions where retail businesses in the Borough of East Newark (“Borough”), contractors performing work in the Borough, and other public entities, private persons or businesses (within or outside of the jurisdictional Boundaries of East Newark) require police-related services, including police vehicles, for added security, traffic control, and other public safety reasons.

**C.** The Attorney General of the State of New Jersey and the Department of Community Affairs, Division of Local Government Services, have determined that members of a municipal police department may, during their off-duty hours, engage in police-related activities for private persons or entities. Pursuant to the laws of the State of New Jersey, a municipality must agree to implement a system whereby the extra-duty assignment of police officers is arranged through a contract between the municipality and the private person or entity.

**D.** The contract between the municipality and a private person or entity must include a plan whereby the compensation for extra-duty police related services is paid to the municipality, and that said payment is placed in a special trust fund to be established by the municipality, and that the proceeds of said fund will be disbursed through the finance office to the individual police officers performing such services.

**E.** It is in the best interest of the Borough’s citizens, including the business community, to establish a procedure for extra-duty police assignments which will allow for the greater protection of the citizens of the Borough.

**F.** The Borough has adopted extra-duty fee schedules in the past, and there is a need to consolidate and update these schedules and simplify the fees the Borough charges to such persons requiring extra duty police services, and reset the allocation of the fees as between the Borough and the police officers. The Borough may contract with a third-party provider to manage and oversee extra-duty assignments on behalf of the Borough’s administration. Any such arrangement shall be consummated through a contract to be approved by the Borough.

## **Section 2. Definitions**

**A.** “Administrative Fee” or “Administration Fee” shall be that portion of the fees paid by the private persons or entities for Extra-Duty Police Services, which shall be allocated to the Borough to offset the costs associated with administering the Extra-Duty Police Services.

**B.** “Extra-Duty Police Services” shall mean police officer providing security, traffic control, or other police-related functions for private business or persons where the actual or potential use of law enforcement powers may be required. Extra-Duty Police Services may be provided at the request of a private business or person, or the Chief of Police may mandate, for reasons of public safety, that a private business or person secure Extra-Duty Police Services.

## **Section 3. Assignment**

**A.** The Chief of Police, or his designee, shall be responsible for the assignment of all Extra-Duty Police Services. The Chief of Police shall be authorized to designate other members of the police department as needed to assist him in the assignment and processing of Extra-Duty Police Services.



The procedure for assignment of Extra-Duty Police Services shall be as follows:

1. The Chief of Police, or his designee, shall create and maintain a list whereby police officers may volunteer for Extra-Duty Police Services; and

2. The Chief of Police, or his designee, shall assign all Extra-Duty Police Services from the aforementioned list of officers desiring said assignment; said assignments to be made on a rotating basis as the assignment becomes available.

#### **Section 4. Contracts with Private Persons/Entities**

Any private person or entity desiring to retain Extra-Duty Police Services shall be required to enter into a written contract with the Borough. Said contract shall include, but not be limited to, the nature of duties to be performed, the location of said duties, the number of officers, proof of adequate insurance (including Workers' Compensation), the equipment involved, the date and hours of service, and the rate of payment for services and equipment. The contract will also provide for payment in advance by the private person or entity for services to be performed.

#### **Section 5. Payment Procedures**

The person or entity requesting Extra-Duty Police Services shall pay the Borough in advance, based on the Chief of Police's, or his designee's discretion, up to two hundred percent (200%) of the estimated amount due for the requested services. The Borough shall deposit the monies collected from said private person or entities, earmarked for payment to the officers performing Extra-Duty Police Services, into a special trust fund to be established to receive such monies. All members of the police department shall be paid for Extra-Duty Police Services performed on the next regular pay date after submission of a pay slip approved by the Police Chief or his designee and properly authorized by the private person or entity. All police officers shall be paid at the rates set forth herein for Extra-Duty Police Services.

#### **Section 6. Third Party Administrator**

1. In the event that the Borough retains or secures a third party vendor to provide management and oversight of extra-duty services, private persons or entities shall be required to comply with any additional requirements specified by the third party vendor, in addition to those requirements set forth herein. In the event that there are any conflicts between the requirements of the third party vendor and this Ordinance, the terms and conditions of this Ordinance shall govern.

#### **Section 7. Insurance & Indemnification**

A. Each private person or entity that shall retain officers for Extra-Duty Police Services pursuant to this Ordinance shall be responsible for maintaining their own insurance coverage. No private person or entity shall employ a Borough of East Newark Police Officer for "extra duty" without having first filed with the Borough of East Newark Clerk's Office a Certificate of Insurance. Said insurance coverage shall include but not be limited to the following insurance coverage and amounts:

1. Commercial general liability coverage with a minimum of \$1,000,000 per occurrence. \$2,000,000 products/completed operations, and \$2,000,000 in the aggregate.



2. Comprehensive automobile liability insurance coverage with \$1,000,000 combined single limit.

3. Worker's Compensation with "Statutory Limits" in accordance with New Jersey Statutes, with respect to injuries and/or damages suffered or caused by Police Officers (or its other employees) while performing "extra duty" work for the private person or entity.

4. Employers liability insurance limits shall be bodily injury by accident of \$1,000,000 each accident, bodily injury by disease \$1,000,000 each employee, bodily injury by disease \$1,000,000 policy limit.

**B.** Proof of said insurance coverage shall be provided to the Borough prior to the assignment of any police officers for Extra-Duty Police Services.

**C.** The Borough shall be named as an additional insured on the general liability, automobile liability and Workers' Compensation policies referenced in Section 7.A.

**D.** Although the private employer's Worker's Compensation policy shall be the primary coverage for Police Officers working Extra-Duty Police Services who are injured during the provision of such services, the Borough's Worker's Compensation insurance shall cover its Police Officers for injuries resulting from providing Extra-Duty Police Services within the jurisdictional boundaries of the Borough for any gaps in Worker's Compensation coverage or a declination of such coverage by the private employer's Worker's Compensation carrier (the Borough shall also abide by its existing practice of paying the difference between Worker's Compensation benefits and the Police Officer's salary). The provisions of this subparagraph shall not apply to any Extra-Duty Police Services worked outside of the jurisdictional boundaries of the Borough of East Newark. The Borough's Worker's Compensation policy shall not be applicable to cover Police Officers injured during the course of providing Extra-Duty Police Services outside of the jurisdictional boundaries of the Borough and such Police Officers sole recourse shall be the Worker's Compensation policies of the private employer; nor will the Borough's practice of paying the difference between Worker's Compensation benefits and the Police Officer's salary be applicable in such circumstances.

**E.** Any private person or entity requesting the Extra-Duty Police Services shall defend and indemnify the Borough and hold it, its officials, officers, agents, representatives and employees, harmless from any and all losses, claims, liabilities or damages of any kind, including attorney's fees and costs, for personal injury, damage to property or other liabilities of any kind resulting from, or arising out of Extra-Duty Police Services.

## **Section 8. Availability of Officers & Equipment; Police Emergencies**

**A.** The assignment of officers and equipment for Extra-Duty Police Services shall be subject to the Chief of Police's, or his designee's, sole discretion. The assignment of such services shall also be subject to availability considering the Police Department's limited resources.

**B.** The Chief of Police, or his designee, shall have the authority to order any police officer, engaged in Extra-Duty Police Services, to respond to an emergency situation. The Chief of Police, or his designee, shall also have the right to order any Extra-Duty Police Services assignment to be terminated whenever said assignment creates an unacceptable risk to the health, safety and welfare of the officer and/or the citizens of the Borough. In the event a police officer is assigned to an emergency, the Chief of Police, or his designee, shall make note of said emergency, as well as the time said officer was removed from said Extra-Duty Police Services assignment. In any situation where an Extra-Duty

police officer is called to an emergency situation, said private person or entity shall not be responsible for the payment of fees related to the time the officer was called away from the Extra-Duty Police Services assignment.

### **Section 9. Extra-Duty Police Service Rates**

**A.** The following rates shall apply for Extra-Duty Police Services:

1. General Rate: Except as set forth in Section 11, the Extra-Duty Police Services rate shall be \$120.00 per hour, per police officer. In the event the Borough appoints a third party vendor, in accordance with Section 6, the private person or entity shall pay the costs of the third party vendor, directly.

2. Rate for Police Vehicles: The rate for the use of a police vehicle (marked or unmarked) shall be \$25 per vehicle, for up to a maximum eight (8) hours. The determination of whether a police vehicle is required shall be in the sole discretion of the Chief of Police, or his designee.

### **Section 10. Minimum Hours**

**A.** The minimum number of hours for an Extra-Duty Police Services assignment shall be four (4) hours. In the event the person or entity requesting the Extra-Duty Police Services utilizes such services for less than four (4) hours, it will be required to render payment to the Borough as if each officer utilized had worked a full four (4) hours.

### **Section 11. Allocation of Fee**

**A.** The fees collected by the Borough shall be allocated as follows:

1. The Borough will keep \$20 per hour, per police officer assigned as the Administrative Fee.

2. The remaining hourly rate shall be payable to the police officer that worked the assignment.

3. In the event a third party vendor administers the Extra-Duty Police Services, the police officer shall receive the full amount of payment, minus any applicable administrative fee of the third party vendor, if any.

4. The Borough will keep the entire fee related to the use of the police vehicles (\$25 per hour) for Extra-Duty Police Services.

### **Section 12. Repealer**

All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed as to the inconsistency thereof.

### **Section 13. Severability**

If any article, section, sub-section, sentence, clause or phrase of this Ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portion of this Ordinance.



**Section 14. Effective Date**

This Ordinance shall take effect upon adoption and publication as required by law.

Introduction – First Reading

| Council Member | Motion | Second | Ayes | Nays | Abstain | Absent |
|----------------|--------|--------|------|------|---------|--------|
| Diaz           |        |        | X    |      |         |        |
| Evaristo       | X      |        | X    |      |         |        |
| Graham         |        |        |      |      |         | X      |
| Lucas          |        | X      | X    |      |         |        |
| Tighe          |        |        |      |      |         | X      |
| Zincavage      |        |        | X    |      |         |        |

CERTIFICATION

I, Kevin D. Harris, Borough Clerk of the Borough of East Newark, County of Hudson, State of New Jersey, do hereby certify that this Ordinance was introduced on first reading by the Mayor and Borough Council at a public meeting of the Mayor and Borough Council held on October 12, 2021.

Kevin D. Harris  
Borough Clerk

Adoption – Second Reading

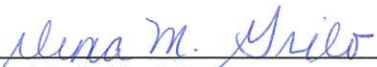
| Council Member | Motion | Second | Ayes | Nays | Abstain | Absent |
|----------------|--------|--------|------|------|---------|--------|
| Diaz           |        |        |      |      |         | X      |
| Evaristo       | X      |        | X    |      |         |        |
| Graham         |        | X      | X    |      |         |        |
| Lucas          |        |        | X    |      |         |        |
| Reis           |        |        |      |      | X       |        |
| Zincavage      |        |        | X    |      |         |        |

CERTIFICATION

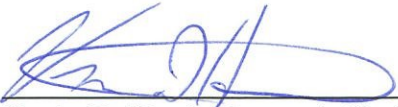
I, Kevin D. Harris, Borough Clerk of the Borough of East Newark, County of Hudson, State of New Jersey, do hereby certify that this Ordinance was adopted on second reading after a public hearing, by the Mayor and Borough Council at a public meeting of the Mayor and Borough Council held on November 10, 2021.

Kevin D. Harris  
Borough Clerk

Adopted:

  
\_\_\_\_\_  
Dina M. Grilo, Mayor

Attest:

  
\_\_\_\_\_  
Kevin D. Harris, Borough Clerk