

Mr. Nolan offered the following Ordinance pass third and final reading and moved on its adoption and authorized its publication according to law:

ORDINANCE O-07-17

AN ORDINANCE DESIGNATING CLARIFYING THE APPROPRIATE AUTHORITY FOR THE POLICE DEPARTMENT AND REVISING PROCEDURES FOR POLICE OFF-DUTY WORK

WHEREAS, the Borough of Highlands has heretofore had in place ordinances establishing a police department; and

WHEREAS, as required by State Statute the Borough must designate the appropriate authority for the police department and must also designate the organization of the police department; and

WHEREAS, the Borough seeks to designate the Borough Administrator as the Appropriate Authority for its Police Department and to clarify the duties and responsibilities of both the Appropriate Authority and the Chief of Police; and

WHEREAS, the Borough has established the organization of the Police Department along with the particular ranks and number of individuals holding such ranks; and

WHEREAS, the Borough of Highlands has determined that there exists a need to clarify and specify the policy of the Borough as it pertains to the provision of approval for and payment for such off-duty work to insure that its police officers are paid for their work; and

WHEREAS, this ordinance is intended to provide such clarification and specification consistent with the provisions of Highlands hereby establishes a policy regarding the use of said officers in compliance with N.J.S.A. 45:19-9 et seq., as amended by the Security Officers Registration Act, P.L. 2004, c.134

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Highlands that the Borough Ordinances are hereby amended as follows to provide a guide for the purpose of clarifying and specifying the organization of its police department and clarifying the standards and procedures applicable to police off-duty work and assignments:

2-10 POLICE DEPARTMENT.

2-10.1 Creation.

There shall be a police department of the borough, the head of which shall be the chief of police.

2-10.2 Composition

The police department shall consist of a chief, and one captain, one lieutenant, no more than four (4) sergeants and no more than eight (8) patrolmen.

The Borough Administrator is designated as the Appropriate Authority for the Police Department and shall be responsible for the overall performance of the Police Department. The Appropriate Authority shall promulgate and adopt Rules and Regulations for the governance of the Police Department and for the discipline of its members.

2-10.3 Chief of Police

The Chief of Police shall be the head of the Police Department and shall be directly responsible to the Appropriate Authority for the department's efficiency and day-to-day operations.

Pursuant to policies established by the Appropriate Authority, the Chief of Police shall:

- Administer and enforce the rules and regulations of the police department and any special emergency directive for the disposition and discipline of the department, its members and officers;*
- Delegate such authority as may be deemed necessary for the efficient operation of the Police Department to be exercised under the Chief's direction and control;*
- Prescribe the duties and assignments of all subordinates and all other personnel; and*
- Report at least monthly to the Appropriate Authority in such form as shall be prescribed on the operation of the Police Department during the preceding month and make such other reports as may be requested by the appropriate authority.*

2-10.4 Probationary Appointment.

No person shall be given or accept a permanent appointment as a police officer in the borough unless such person has first been given a probationary appointment to such office for a period of one year and has successfully completed a police training course at a school approved and authorized by the police training commission in the Department of Law and Public Safety of the State of New Jersey, pursuant to the provisions of N.J.S.A. 52:17B-66 and any subsequent amendments or revisions thereto.

2-10.5 Leave of Absence.

If any member of the police force is injured, ill or disabled from any cause so as to be physically unfit for duty during the period of such disability and physical unfitness for duty, where same shall be evidenced by the certificate of a physician designated by the mayor and council to examine such person he may grant a leave of absence with full pay or such proportion thereof as they may fix to such person, provided no leave of absence with pay shall exceed one (1) year commencing with the date of such illness, injury or disability.

2-10.6 Police Headquarters.

The police headquarters are hereby established in the municipal building, situated at 171 Bay Avenue, Highlands, New Jersey which shall be open for the transaction of business at all hours of the day and night including Sundays.

2-10.7 Duties of Police Officers.

It shall be the duty of police officers to preserve public peace and to see that all laws and ordinances relating thereto are properly enforced; they shall faithfully and promptly obey all orders, rules and regulations prescribed and perform such other duties as directed by the appropriate authority.

2-10.8 Removal and Suspension.

Each regular police officer shall hold his office and continue in his employment during good behavior, efficiency, and no person shall be removed from office or employment for any other causes than incapacity, misconduct, neglect of duty, conduct unbecoming a police officer, disobedience of the rules and regulations established and hereafter established for the department or absence from duty without just cause for five days or more.

Any regular member of the department may be suspended, removed, fined, or reduced from his office or employment, therein, for just cause upon due notice and service of written charges and a hearing. This subsection shall not apply to probationary patrolmen.

2-10.9 Charges Against Police Member.

No member or officer of the police department shall be suspended, removed, fined or reduced in rank for any cause other than for incapacity, misconduct or disobedience as provided in the New Jersey Statutes and the police department's rules and regulations.

2-10.10 Rules to be Made by Appropriate Authority

The Borough Administrator, who is hereby designated as the “appropriate authority” pursuant to N.J.S.A. 40A:13-118, may make such rules and regulations concerning the conduct and duties of the officers, the kinds of uniform and insignia to be worn by them and concerning such other matters as may be necessary for the proper regulation of the Police Department and when same have been adopted by the appropriate authority such rules and regulations shall be binding upon each member of the Department.

2-10.11 Special Law Enforcement Officers.

a. *Classification of Officers.* There are hereby established two classifications of special law enforcement officers:

1. Class One. Officers of this class are hereby authorized to perform routine traffic detail, spectator control and similar duties. Class one officers shall have the power to issue summonses for disorderly persons and petty disorderly persons offenses, violations of municipal ordinances and violations of Title 39 of the New Jersey Statutes. The use of a firearm by an officer of this class shall be strictly prohibited, and no class one officer shall be assigned any duties which may require the carrying or use of a firearm.

2. Class Two. Officers of this class shall be authorized to exercise full powers and duties similar to those of a permanent regularly appointed full-time police officer. The use of a firearm by an officer of this class is authorized only after the officer has been fully certified as successfully completing training as prescribed by the police training commission.

b. *Uniforms.* The uniform worn by the special law enforcement officer shall include an insignia issued by the police training commission which clearly indicates the officer's status as a special law enforcement officer and the type of certification (i.e., class one or class two) issued by the commission.

c. *Carrying of Firearms.* Special law enforcement officers who are permitted to carry and return firearms shall do so pursuant to the guidelines established in N.J.S.A. 40A:14-146.14(b).

d. *Rules and Regulations.* Special law enforcement officers shall comply with the rules and regulations applicable to the conduct and decorum of the permanent regularly-appointed police officers of the borough, as well as any rules and regulations applicable to the conduct and decorum of special law enforcement officers.

e. *Number of Categories of Officers.* The number of special law enforcement officers designated as class one members shall not exceed ten persons. The number of special law enforcement officers designated as class two members shall not exceed four persons.

2-10.12 Uniforms.

All members of the police department shall provide and maintain in clean and serviceable condition such wearing apparel and equipment as shall be prescribed by the police commissioner.

2-10.13 Firearms.

All firearms which may be provided by the borough shall remain the property of the borough.

2-10.14 Promotions.

All promotions will be made in accordance with current New Jersey State Department of Personnel Guidelines and procedures.

2-10.15 *Special Duty Assignments.*

A. *General.*

For the convenience of those persons and entities which utilize the services of off-duty law enforcement officers of the Borough of Highlands, and to authorize the outside employment of municipal police while off-duty, the Borough of Highlands hereby establishes a policy regarding the use of said officers in compliance with N.J.S.A. 45:19-9 et seq., as amended by the Security Officers Registration Act, P.L. 2004, c.134.

1. Any and all extra duty assignments for police personnel shall be determined and approved by the Chief of police or his designee. No police officer shall perform special duty assignments for private parties for compensation other than through the procedure set forth in this subsection and in the Police Manual of the Borough of Highlands. The Chief shall obtain such information as he determines necessary and is authorized to approve such special duty police work in accordance with this subsection. The Chief of police may assign a patrol vehicle for use in performing extra duty if and in the event it is determined that the use of a patrol vehicle is necessary to perform the contracted duty. The Chief may deny the assignment or use of police officers or vehicles and/or impose any conditions or requirements as in his sole discretion and determination the Chief or his designee feels is in the best interest of the Borough and/or the police officers or public safety. The Chief shall be guided by the nature of the assignment and should avoid those with conflicts of interest and/or high risk of injury.

2. Members of the Borough of Highlands Police Department, at their option, shall be permitted to accept police-related employment for private employers, who are separate and independent from the Borough of Highlands, only during off-duty hours and at such time as will

not interfere with the efficient performance of regularly scheduled or emergency duty of the Borough.

3. *The work to be performed shall be considered "special assignment from independent contractors" and will not be considered a direct assignment. The taking of any and all extra duty assignments shall be on a voluntary basis in accordance with a fair and reasonable system established by the governing body and administered by the Chief of police.*

4. *Officers engaged in special duty assignments shall be deemed on-duty and shall conform to all police department procedures. All such agreements for special duty assignments shall be contracted for in writing by the completion of a form available from the police department which contracts shall be kept on record as other such public documents.*

5. *All special duty assignments shall be within the municipality, unless specific written approval is given by the Chief to the officer to work outside of the municipality. The Chief of police may contact adjoining borough police departments to see if they are willing to perform such special assignments.*

B. Trust Account and Billing for Services

1. *To assure the timely payment of wages to police officers who perform off-duty services, the Borough of Highlands has established a trust fund known as the "Off-Duty Employment Trust Account," which trust fund is dedicated for the receipt of fees collected from private persons or entities for the payment to police officers for off-duty or outside employment services. The Off-Duty Employment Trust Account shall be administered by the Finance Office of the Borough of Highlands.*

2. *Any person or entity requesting the services of an off-duty law enforcement officer in the Borough of Highlands shall estimate the number of hours such law enforcement services are required, which estimate shall be approved in writing by the Chief of Police, or his or her designee, and upon Chief of Police approval, a copy of said approval shall be forwarded to the Finance Office of the Borough of Highlands. The person or entity requesting the services shall then forward payment for services for the total estimated hours of service, the rates of compensation and administrative fees as set forth in Subsection C to the Finance Office for deposit in a Trust Account within the Off-Duty Employment Trust Account.*

In any instance where the number of hours required is unknown and cannot be reasonably estimated, or is anticipated to be in excess of 10 days, the person or entity requesting the services of an off-duty law enforcement officer shall deposit an amount sufficient to cover the rate of compensation and administrative fees set forth in Subsection C for Page 7the equivalent of 10 days prior to the commencement of any work. Any unused portion of the deposit shall be returned or credited against the final amount owed.

3. *Prior to posting any request for services of off-duty law enforcement officers, the Chief of Police or his or her designee shall verify that the balance in the Trust Account of the person or entity requesting services is sufficient to cover the compensation and fees for the number of hours specified in the request for services. The Chief of Police or his or her designee shall not post a request for services from any person or entity unless all fees and compensation required in the manner described above have been deposited in the Off-Duty Employment Trust Account. All payments must be remitted directly to the Borough for said account. No officer shall be paid directly by any employer for requested services nor provide any such services for more hours than are specified in the request for services.*

4. *In the event of an unforeseen emergency situation requiring an officer's services when funds have not been posted, the Chief of Police or his or her designee may waive the requirement for posting funds in advance for any person or entity exhibiting a previous satisfactory payment history. However, payment for the services and/or posting of funds for any additional services shall be made by the person or entity requiring the service within 48 hours.*

5. *In the event the funds in such a Trust Account should become depleted, services of off-duty law enforcement officers shall cease, and further requests for further or future services shall not be performed or posted until additional funds have been deposited in the Trust Account in the manner prescribed above. In the event of an unforeseen emergency situation that would require an officer to remain beyond the time for which funds have been posted, the Chief of Police or his or her designee may waive the requirement for posting additional funds after the first 10 hours for any person or entity exhibiting a previous satisfactory payment history. However, payment for the additional hours shall be made by the person or entity requiring the extended service within 48 hours.*

6. *The person or entity requesting such services shall be responsible for ensuring that sufficient funds remain in the Trust Account in order to avoid any interruption of services.*

7. *All payments for special duty assignments shall be made through the special police fund established by the Borough's Chief Financial Officer from which payments shall be made to the individual police officers performing such services. All payments from the trust fund shall be made to the police officers subject to required deductions and an administrative fee to be retained by the borough. The charges for such service shall be set forth annually, or as otherwise provided in a resolution adopted by the governing body. Any dispute between the contractor and the police officer on assignment as to services required or compensation due shall be determined by the Chief. His decision shall be final and binding.*

8. *Exemption. All non-profit entities, including public school districts, are exempt from the provisions set forth in this section requiring advance payment to the Trust Account;*

providing, however, that there are no amounts previously due that are outstanding for a period in excess of 30 days. Any such delinquent balances shall require advance payment of the amount outstanding prior to any officer engaging in any further off-duty assignments.

C. Rates of compensation; administrative fee; payment for services.

- 1. The rate of compensation for police officer for all private entities, excluding non-profit entities, shall be \$40 per hour, gross pay before taxes.*
- 2. An additional fee of \$10 per officer hour is hereby established to cover the administrative costs, overhead and out-of-pocket expenses of the Borough of Highlands.*
- 3. The rate of compensation for police officer for all non- private entities, including l public school districts, shall be \$25 per hour, gross pay before taxes.*
- 4. For non-profit entities, an additional fee of \$5 per officer hour is hereby established to cover the administrative costs, overhead and out-of-pocket expenses of the Borough of Highlands.*
- 5. All rates are subject to change by way of resolution of the Mayor and Council.*
- 6. Any assignment which is canceled on less than two hours notice will result in the contracting party being charged for four hours.*

D. Requests for Services

- 1. Any person or entity wishing to employ off-duty police shall first obtain the approval of the Chief of Police or his or her designee, which approval shall be granted if, in the opinion of the Chief of Police or his or her designee, such employment is necessary and would not be inconsistent with the efficient functioning and good reputation of the Police Department and would not unreasonably endanger or threaten the safety of the officer or officers who are to perform the work.*
- 2. The Chief of Police has the authority to order any police officer to vacate or terminate any special duty assignment in response to emergency situations or whenever the assignment creates an unacceptable risk to health, safety and welfare of the police officer and/or public in the sole determination and discretion of the Chief. The contractor shall not be responsible for any compensation for the time that the police officer is away from the special duty assignments and shall have no claim for any costs or damages against the municipality, the Chief, or the police officer arising from the termination for special duty assignment other than the prorated return of any costs prepaid to the borough.*

3. *The contractor for services shall be responsible to provide to the Chief and borough administrator all necessary insurance coverage as required by law, including but not limited to, worker's compensation, public liability, and claims for damage, for personal injury including death or damage to property which may arise as a result from the officer's performance under the contract.*

4. *The Borough shall be responsible to provide all necessary insurance coverage as required by law including, but not limited to, worker's compensation, public liability and claims for damage, for personal injury, including death or damage to property which may arise as a result from the borough's performance under the contract — said insurance being in all respects secondary to the contractor for services insurance required in paragraph h. above.*

5. *Copies of any "special duty/extra duty assignments" shall be provided by the Chief to the Borough Administrator simultaneously with their being entered into. All special duty/extra duty requirements shall provide the information called for in the Police Manual, Section 4.*

Seconded by Miss Thomas and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Nolan, Miss Thomas, Mr. Caizza, Mr. Urbanski, Mayor O'Neil

NAYES: None

ABSENT: None

ABSTAIN:

DATE: September 5, 2007

NINA LIGHT FLANNERY, Borough Clerk
CAROLYN CUMMINS, Deputy Clerk

Intro: August 15, 2007

Publish: August 22, 2007, Asbury Park Press

2nd Reading: September 5, 2007

Adoption: September 5, 2007

Publication: September 13, 2007, The Courier

I hereby certify this to be a true copy of Ordinance #O-22-07 as adopted on September 5, 2007.

BOROUGH CLERK/DEPUTY CLERK