

ORDINANCE OF THE CITY OF EAST ORANGE, NEW JERSEY

1st Reading: 3, 9, 2020
Public Hearing: 4, 13, 2020
Final Reading: 4, 13, 2020

Referred to Planning Board: / /
Received from Planning Board: / /

Approved as to Form and Legality
On Basis of Facts Set Forth:
Ryan Deal
Corporation Counsel

Factual Contents Certified to By:

Department Head

Appropriations:

Comptroller

Tabled: / /
Removed From Table: / /

Councilman/Councilwoman *PULLINS*

Presents the following Ordinance:

ORDINANCE NO. 12 of 2020

ORDINANCE TO AMEND AND SUPPLEMENT ARTICLE XVI CHAPTER 60 OF THE CITY CODE ENTITLED "EMPLOYMENT OF POLICE OFFICERS BY PRIVATE PARTIES" REGULATING OFF-DUTY EMPLOYMENT FOR LAW ENFORCEMENT

WHEREAS, there is a need to amend and supplement Chapter 60 which regulates off-duty employment for law enforcement.

SECTION 1.

§ 60-95 **Purpose.**

The purpose of this article is to establish a procedure providing for the acquisition of and compensation to members of the police force during off-duty hours by private parties requiring special police services.

§ 60-96 **Assignments of off-duty police officers.**

Eligibility and limitations. Sworn members of the East Orange Police Department who are authorized to engage in off-duty employment shall be permitted to accept police-related employment, in accordance with the East Orange Police Department Rules and Regulations, for private employers who are separate and independent from the City of East Orange, only during off-duty hours, to perform public safety functions on behalf of and as assigned by the Public Safety Director or the Chief Law Enforcement Officer of the Police Department, while receiving compensation from the Police Department at the rates established by the governing body of the City of East Orange, at such times as will not interfere with the efficient actual performance of regularly scheduled or emergency duty for the City.

The City's Off Duty Employment program shall be managed by an outside entity that is selected on an annual basis in a manner that comports and complies with New Jersey's Local Public Contracts Law. N.J.S.A. 40A:11-1.

§ 60-97 **Request for services.**

A.

Approval of Public Safety Director.

Any person or entity wishing to employ off-duty East Orange police officers as security officers (as an employee, agent or subcontractor of a private security company or private employer) shall first obtain the approval of the Public Safety

Director or his or her designee, which approval shall be granted if, in the opinion of the Public Safety Director 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.

B.

All road construction, traffic control or public safety functions required which interfere with motor vehicle or pedestrian traffic on City streets (curb to curb) shall require the use of a uniformed police officer. ~~In order to maximize safety, it is encouraged that all vendors utilize East Orange police officers. These vendors are required to schedule employment of East Orange police officers through the Police Department's Outside Employment Unit.~~ The East Orange Director of Public works shall determine whether an officer is needed while the Director of the Department of Public Safety will determine the specific number of officers that are required.. Off duty East Orange Police Officers shall be assigned to provide the services contemplated by this Ordinance. Violations of this requirement shall be deemed a disorderly persons offense by the person that requested and/or paid for the out of district officers.

C.

The Public Safety Director or his or her designee is hereby authorized to execute an agreement with the applicant for services required, which agreement shall set forth the specific nature of the services to be performed, the location, dates and hours of service, payment arrangements mandated by this article, insurance coverage or any other provisions required by law or regulation of the State of New Jersey. The applicant must first file a request for services with the Police Department's Outside Employment Unit.

D.

All requests to the City for the services of off-duty law enforcement officers in the City of East Orange Police Department shall be forwarded to the Public Safety Director for posting within the time frame established by the Police Department. The Public Safety Director in his or her discretion may approve emergency requests for services.

E.

All requests to the East Orange Police Department for the services of off-duty law enforcement officers for a period of one week or longer shall be forwarded to the Public Safety Director or his or her designee for posting at least 10 business days before such services are required. Any law enforcement officers, when so employed by private employers, shall be compensated at the rate set forth in ~~§ 60-99.1.~~ herein.

F.

All requests to the East Orange Police Department for service of off-duty law enforcement officers for a period of less than one week shall be forwarded to the

Public Safety Director or his or her designee for posting within seven business days prior to the desired start work date. Any law enforcement officers, when so employed by private employers, shall be compensated at the rates set forth in § **60-99.1**.

G.

In emergency situations, requests to the East Orange Police Department for the services of off-duty law enforcement officers shall be made as necessary to the Public Safety Director or his or her designee, who shall use his or her discretion in approving or denying that request, considering the interests of the Police Department.

H.

Any law enforcement officers, when so employed, shall not be considered an employee of the City, except for discipline purposes. Any and all wages earned for outside employment shall not be applied toward the pension benefits of law enforcement officers so employed, nor shall hours worked for outside employment be considered in any way compensable as overtime under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., or compensable in any other manner that requires the City to pay the officers by City funds through its payroll system.

I.

The Police Department Policy and Procedures shall be revised to be in compliance with this section and N.J.S.A. 45:19A-9 et seq.

§ 60-98 Police uniforms.

East Orange police officers performing off-duty police-related services for applicants shall be in full police uniform while said services are being provided.

§ 60-99 Off-duty employment escrow account.

A.

Establishment. To assure the timely payment of wages to police officers who perform off-duty services, and to meet the requirements of the Fair Labor Standards Act, ~~the Chief Financial Officer of the City of East Orange shall establish an escrow account known as the "off-duty employment trust account," or such other name as assigned by the Chief Financial Officer in accordance with appropriate rules and statutes, 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 escrow account shall be administered by the City's Finance Division.~~ the City's designee shall establish and maintain an escrow account from which all monies will be paid.

B.

Any person or entity requesting the services of an off-duty law enforcement officer in East Orange shall estimate the number of hours such law enforcement services are required, which estimate shall be approved in writing by the Public Safety Director, or his or her designee, and upon Public Safety Director's approval, a copy of said approval shall be forwarded to the City's Finance Division. 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 § 60-99.1 to the Finance Division or the City's designee for deposit in the off-duty employment escrow account prior to the commencement of said services.

C.

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 as set forth in § 60-99.1 for the 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.

D.

Prior to posting any request for services of off-duty law enforcement officers, the Public Safety Director or his or her designee shall verify that the balance in the escrow 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 Public Safety Director 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 escrow account. All payments must be remitted directly to the City of East Orange Finance Division for deposit in 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.

E.

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

F.

In the event the funds in the escrow account should become depleted or that the escrow account falls below the designated level, services of off-duty law enforcement officers shall cease, and further requests for additional or future services shall not be honored or posted until additional funds have been deposited in the escrow account in the manner prescribed above.

G.

~~The Chief of the East Orange Police Department, or his designee, shall make a written report to the Public Safety Director every 90 days regarding the status of each account and highlight each deficient account holder. Payments to police officers shall be on a biweekly basis with all appropriate deductions. On a quarterly basis, the City's designee shall provide the City of East Orange with its~~

administrative fees and a detailed accounting of all escrow accounts. Both items shall be provided to the City's Chief Financial Officer.

H.

The City shall establish a list of officers that are eligible for outside employment. The revolving list will be arranged alphabetically and managed by the City's designee.

§ 60-99.1 Rates of compensation; administrative fee; payment for services; equipment costs.

A.

Absent any contractual agreements with a vendor or contractor to the contrary, the following rates of compensation apply:

(1)

Traffic control, parades and events, movie/TV sets: ~~\$75 per hour~~ \$82.50 per hour.

(2)

Store or building security: ~~\$50 per hour~~ \$82.50 per hour.

(3)

Supervisory fee: \$5 per hour added to the applicable fee.

An administrative fee of 25% shall be added to the aforementioned rates of compensation to offset expenses the City incurs in connection with the outside employment program.

B.

~~All off-duty employment law enforcement officers shall be guaranteed a minimum of four hours and be compensated for any fraction thereof, or whole hour, in addition thereto. Off duty non-supervisory employees shall be compensated at a rate of \$82.50 per hour. Supervisory Officers shall be compensated at a rate of \$87.50 per hour.~~

C.

~~A supervisor will be required for every six police personnel assigned to a security officer company. The supervisory fee will be paid to the highest ranking member of the Department assigned to the vendor (referring to private security company or private employer). Once a determination is made by the Director of Public Works that an Off Duty Offer(s) is in fact needed, the City's Public Safety director shall determine the number of officers that are required as well as whether a supervisor's presence is needed.~~

D.

~~An additional fee of \$5 per officer per hour is hereby established to cover administrative costs, overhead, and out-of-pocket expenses of the City.~~

An administrative fee of 25% shall be added to the aforementioned rates of compensation to offset expenses the City incurs in connection with the outside employment program.

E.

~~Any commercial single store detail, and details for or on behalf of tax exempt organizations, nonprofit [501(c)(3)] organizations, civic organizations, and individuals in noncommercial situations shall be at the hourly rate of \$25. However, any such details deemed by the Public Safety Director or his/her designee, based upon prior history, to involve major or unusual crowd control issues, including, but not limited to, parades and festivals, then in that event the hourly rate shall be \$57 per hour.~~

F.

Exemption. All public utility companies 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 15 days. Any such delinquent balances shall require advance payment of the amount outstanding prior to any officer engaging in any further off-duty assignments.

G.

Cancellation. In the event that the person or entity requesting the off-duty law enforcement officers fails to contact the City of East Orange at least four hours prior to the scheduled start time to cancel the job, or the officer works less than four hours and the job is completed, the officer is entitled to be paid for the minimum of four hours.

H.

Request for City-owned vehicles. All requests for City-owned vehicles for use exclusively by an officer while performing public safety functions on behalf of and as assigned by the Police Department must be reviewed by the Public Safety Director.

(1)

Marked police vehicle: \$10 per hour.

I.

The request shall be approved in writing by the Public Safety Director if, in the opinion of the Public Safety Director, the intended use of the vehicle by the off-duty officer would not be inconsistent with the rules and regulations of the East Orange Police Department, the laws of this state and/or the efficient functioning and good reputation of the East Orange Police Department.

J.

The aforesaid rates may be reviewed from time to time as may be appropriate; however, they shall remain in full force and effect until appropriately amended.

K.

~~The Police Department Policy and Procedures shall be revised to be in compliance with this article and N.J.S.A. 45:19A-9 et seq.~~

§ 60-99.2 Public emergency.

The Public Safety Director or his or her designee shall have the authority to order any police officer engaged in off-duty assignments within the City of East Orange to respond to an emergency situation within East Orange. The Public Safety Director or his or her designee shall also have the right to order any off-duty assignment to be terminated whenever said assignment creates an unacceptable risk to the health, safety and welfare of the off-duty officer and/or the citizens of East Orange.

§ 60-99.3 Insurance requirements.**A.**

The applicant (private security company or private employer) shall be responsible for providing all insurance coverage as required by law. The applicant shall provide East Orange with appropriate certificates of insurance naming East Orange and the police officers as additional insureds and evidencing that the police officer and the City are covered by general liability coverage on an occurrence basis of at least \$1,000,000 each occurrence and workers' compensation insurance with respect to the services to be provided. The certificate of insurance or the policy shall contain the following language: "The City of East Orange, its agents, servants and administrators are included as additional insureds with respect to general liability coverage as required by written contract."

B.

As an alternative, the Public Safety Director, after consultation with the City's Risk Manager, may accept a broad form policy endorsement in addition to a certificate of insurance (with language satisfactory to the City's Risk Manager, in accordance with City policies and procedures) naming the City of East Orange and the police officer as additional insureds under the policies.

§ 60-99.4 Indemnification and duty to defend.**A.**

The person or entity requesting the services of the off-duty police shall execute an appropriate hold harmless and indemnity agreement, which shall provide that such person or entity shall indemnify, defend, and hold harmless the City of East Orange, its agents, servants and administrators from and against any and all claims, or actions at law, whether for personal injury, property damage or liability, including any cost of defense incurred by the City of East Orange which arises from any acts or omissions of the insured, its agents, or employees arising out of or related to the use of off-duty East Orange police officers.

B.

This indemnification and hold-harmless agreement and the duty to defend shall apply in all instances, whether the City of East Orange is a plaintiff or is made a direct party to the initial action or claim or is subsequently made a party to the action by third-party in-pleading or is made a party to a collateral action arising, in whole or in part, from any of the issues from the original cause of action or claim.

FIRST READING

| Councilmember | AYE | NAY | NV | AB | VETO |
|------------------|-----|-----|----|----|------|
| GOMEZ | X | | | | |
| BRENT | | | | X | |
| PULLINS | X | | | | |
| GARRETT- WARD | X | | | | |
| LENEUS | | | | X | |

| Councilmember | AYE | NAY | NV | AB | VETO |
|---------------|-----|-----|----|----|------|
| HOLMAN | X | | | | |
| AWE | | | | X | |
| LEWIS | X | | | | |
| CLAYBROOKS | | | | X | |
| JAMES | X | | | | |

RECORD OF COUNCIL VOTE ON SECOND READING & FINAL PASSAGE

| Councilmember | AYE | NAY | NV | AB | VETO |
|------------------|-----|-----|----|----|------|
| GOMEZ | | | | | |
| BRENT | | | | | |
| PULLINS | | | | | |
| GARRETT- WARD | | | | | |
| LENEUS | | | | | |

| Councilmember | AYE | NAY | NV | AB | VETO |
|---------------|-----|-----|----|----|------|
| HOLMAN | | | | | |
| AWE | | | | | |
| LEWIS | | | | | |
| CLAYBROOKS | | | | | |
| JAMES | | | | | |

X - Indicates Vote AB - Absent NV - Not Voting (Abstain/Excused)

ACTION ON VETO: ✓ to Sustain ✓✓ to Override

Passed on First Reading: 3, 9, 2020

Adopted on Final Reading: _____ / _____ / _____

Presented to Mayor: _____ / _____ / _____

Approved: _____ / _____ / _____ Vetoed: _____ / _____ / _____

Reconsidered by Council: _____ / _____ / _____

Council Chairman/Chairwoman

Mayor

City Clerk