

ORDINANCE NO. 2019-9

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE BOROUGH OF ELMER,
SALEM COUNTY, STATE OF NEW JERSEY, AMENDING CHAPTER 2
ENTITLED "ADMINISTRATION" OF THE CODE OF THE BOROUGH OF ELMER**

WHEREAS, the Mayor and Council of the Borough of Elmer have determined that certain amendments to Chapter 2 entitled "Administration" are necessary; and

WHEREAS, in all other respects Chapter 2 entitled "Administration" shall remain in full force and effect;

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Elmer, County of Salem and State of New Jersey, and it is hereby enacted and ordained by the authority of same as follows:

Section 1.

Chapter 2 entitled "Administration", at §2-25 entitled "Police Department" shall be amended to include a new §2-25.10 entitled "Extra-Duty Employment" to read in its entirety as follows:

§ 2-25.10. Extra-Duty Employment.

A. Purpose.

(1) The purpose of this section is to set forth guidelines to govern the employment of Borough of Elmer police officers for "extra- duty" (off-duty) details within the Borough of Elmer or within other local municipalities and which extend beyond their regular assigned duties and responsibilities.

(2) Members of the Borough of Elmer Police Department shall be permitted to accept police-related employment from contractors or other public agencies only during off-duty hours and at such time as will not interfere with the efficient performance of regularly scheduled or emergency duty for the Borough as determined by the Borough of Elmer Chief of Police. Acceptances of such assignments by the police officers are strictly voluntary, and the acceptance or declination of such assignments is not a condition of employment.

B. Definitions. For the purpose of this section, the following words and phrases, unless otherwise indicated, shall be deemed to have the following meanings:

EMPLOYER

Any individual, partnership, corporation, business entity, contractor or other organization, located either within or outside of the Borough of Elmer.

EXTRA DUTY

Any employment when a police officer is not scheduled for a shift of duty by the Borough of Elmer Police Department and that is conditioned on the actual or potential use of law enforcement powers by the police officer employee. This shall be limited to employment as a security guard, traffic control officer or plainclothes surveillance officer.

PLAINCLOTHES SURVEILLANCE OFFICER

A position of employment involving the wearing or carrying of a Borough of Elmer Police badge or the carrying of a firearm or other dangerous weapon as defined by N.J.S.A. 2C:39-1.

POLICE OFFICER

Any class of police officer of the Borough of Elmer.

SECURITY GUARD

A position of employment involving the wearing of a Borough of Elmer uniform, badge, and/or the carrying of a firearm or other dangerous weapon as defined by N.J.S.A. 2C:39-1.

TRAFFIC CONTROL OFFICER

A position of employment involving the wearing of a Borough of Elmer Police uniform while directing traffic within or outside the Borough of Elmer.

WHILE IN THE EMPLOY OF THE EMPLOYER

All times when a police officer is scheduled for and does work for an outside employer as "extra duty."

WORKER'S COMPENSATION INSURANCE

All forms of insurance, including self-insurance, required under N.J.S.A. 43:15-1 et seq.

C. Requirements.

(1) Any person or entity seeking to employ off-duty police shall first obtain the approval of the Chief of Police, which approval shall be granted if in the opinion of the Chief such employment would not be inconsistent with the efficient functioning and good reputation of the Borough of Elmer Police Department, and would not unreasonably endanger or threaten the safety of the officer or officers who are to perform the work.

(2) Assignments shall be for a minimum of four (4) hours; cancellation of an assignment with less than two (2) hours notice shall be subject to this minimum.

(3) No employer shall employ a Borough of Elmer police officer for extra duty without having first filed with the Borough of Elmer Clerk a certificate of insurance. The certificate shall designate the Borough of Elmer as "Additional Insured" and evidence comprehensive general liability and automobile liability in the amount of not less than \$1,000,000 any one occurrence and worker's compensation with "statutory limits" with respect to injuries and/or damages suffered or caused by police officers while in the employ of the employer.

(a) All policies of insurance evidenced by any certificate filed hereunder shall be maintained by the employer in full force and effect at all times while any police officer is employed by such employer. Upon the change or renewal of any such policy of insurance, the employer shall forthwith file with the Borough Clerk a new and current certificate of insurance in compliance with the foregoing provisions.

(b) No certificate of insurance required by this section shall be deemed filed with the Borough Clerk unless it has been first approved by the Borough Risk Management Consultant.

(4) Escrow account.

(a) Except as provided herein, any person or entity requesting the services of an off-duty police officer of the Borough of Elmer Police Department shall estimate the number of hours such law enforcement services are required, which estimate shall be approved in writing by the Chief of Police, and shall establish an escrow account with the Borough Treasurer by depositing an amount sufficient to cover the rates of compensation and administrative fees set forth herein for the total estimated hours of service.

(b) If the amount required to be deposited with the Borough exceeds \$5,000, an escrow deposit of \$2,500 shall be required. Said \$2,500 deposit shall be maintained until such time as the amount required to be deposited for all remaining services on any given project shall be less than \$2,500, and then such lesser amount shall be required to be maintained.

(c) 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.

(5) In the event the funds in such an escrow account should become depleted, services of off-duty law enforcement officers shall cease and requests for further or future services shall not be performed or posted until additional funds have been deposited in the escrow account in the manner prescribed above.

(a) State, county and municipal bodies and agencies and public schools shall be exempt from the requirements for the posting of an escrow deposit.

(b) The Borough of Elmer Chief of Police, with the concurrence of the Borough of Elmer Treasurer, may waive escrow requirements for assignments of less than four (4) hours in total with employer history of reliable payment or other indications of prompt and timely payment.

(6) Any employer who employs a police officer for extra duty without first having complied with the requirements as set forth shall be subject to a fine of \$500 for each day that it employs the police officer.

(7) Any police officer who accepts or continues extra-duty employment with an employer who has not complied with the requirements of this section, shall be deemed in violation of the rules and regulations of the Police Department and shall be subject to appropriate discipline. The police officer shall, prior to accepting or continuing extra-duty employment, ascertain from the prospective employer whether it has complied with the provisions hereof. If the employer has not yet complied, the police officer shall not accept the prospective extra-duty employment.

(8) At no time shall payment in the form of cash be exchanged between an employer and any police officer.

(9) Officers assigned to extra-duty details shall be attired as prescribed by the Department's Uniform Policy. Officers shall be attired in the requisite and appropriate uniform or "plain clothes" that is determined to be best suited by the Chief of Police for the nature of the extra-duty detail. Officers shall be subject to all rules and regulations of the Borough of Elmer Police Department.

(10) Officers working any form of traffic-related detail shall comply with all applicable safety standards.

(11) An officer on an extra-duty assignment shall take police action in response to any serious police matter coming to their attention at any time, and are additionally expected to respond to emergency situations in the Borough of Elmer if the extra duty assignment is within the immediate area. All officers are subject to recall to duty if an emergency arises in the Borough of Elmer.

(12) In order to be eligible for extra-duty employment, a police officer must be in good standing with the Department. Officers who are on medical or other leave due to sickness, temporary disability or an on-duty injury shall not be eligible to engage in extra-duty employment. Officers who do not report for their regular shift duty shall be ineligible for extra-duty detail. Officers who are found to be performing extra duty assignments when they have called out sick for regular-duty work within the Borough of Elmer shall be subject to disciplinary action.

(13) Wages earned for outside, extra-duty employment by any Borough of Elmer police officer shall not be applied toward the pension benefits of the police officer so employed, nor shall hours worked for outside employment be considered in any way compensable as overtime payable by the Borough of Elmer.

(14) Each employer of a police officer for extra duty must sign in advance a hold-harmless indemnification agreement stating that said employer will release, defend and indemnify the police officer, the Police Chief, the Police Department, the Elmer Borough Council members, Elmer Borough and any agent, officer, employee thereof and save them harmless from and against any and all claims, actions, damages, liability and expenses, including but not limited to court costs and reasonable attorney's fees, without regard to fault, in connection with or arising out of any acts or omissions by the Elmer Borough police officer in performing the extra duty subject to said employer's agreement with the Borough of Elmer or in connection with or arising out of that agreement between said employer and the Borough of Elmer or Borough of Elmer Police Department for such extra-duty assignment.

D. Procedure.

(1) All requests for extra-duty assignments shall be forwarded to the Borough of Elmer Chief of Police. Requests for assignments for a period of one week or longer shall be submitted at least ten (10) days before such services are required. Any prospective employer shall be apprised of any applicable Borough codes, ordinances, rules and regulations, and policies and procedures.

(2) The Chief of Police shall ensure:

(a) Compliance with this policy and all applicable Borough codes and ordinances, Departmental rules, regulations, policies and procedures, and other applicable contracts, agreements, laws and regulations.

(b) All officers working extra-duty details shall do so under the auspices and control of the Department's rules and regulations, and policies and procedures.

(c) All escrow payments, certificates of insurance and applicable forms have been completed, submitted, and accepted as required.

(d) Rates of compensation; administrative fee; payment of services. Rates of compensation for contracting the services of off-duty law enforcement officers shall be \$55 per hour. In addition, the employer shall pay an administrative fee equal to 15% of the hourly rate to cover the administrative costs, taxes, insurance and out-of-pocket expenses incurred by the Borough of Elmer for each officer working extra-duty. If the employer requires the off-duty law enforcement officer to utilize a patrol vehicle, the employer shall pay an additional fee in the sum of \$45.00 per hour. Payment shall be made to the Borough no later than thirty (30) days from the Invoice date.

Section 2.

Repealer.

All prior Ordinances or parts of Ordinances inconsistent with this Ordinance be and the same are hereby repealed to the extent of such inconsistencies.

Section 3.

Severability.

Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 4.

When effective.

This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

BOROUGH OF ELMER

BY: _____
Joseph Stemberger, Mayor

ATTEST:

Sarah D. Walker

Registered Municipal Clerk

	<u>MOTION</u>	<u>SECOND</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Schneider	_____	_____	_____	_____	_____	_____
Davis	_____	_____	_____	_____	_____	_____
Nolan	_____	_____	_____	_____	_____	_____
Foster	_____	_____	_____	_____	_____	_____
Schalick	_____	_____	_____	_____	_____	_____
Zee	_____	_____	_____	_____	_____	_____

The Ordinance published herein was introduced and passed upon first reading at a meeting of the Mayor and Council of the Borough of Elmer, in the County of Salem and State of New Jersey, held on November 13, 2019. It will be further considered for final passage, after public hearing hereon, at a meeting of said Mayor and Council to be held in the Borough Hall, 120 South Main Street, Elmer, New Jersey 08318, on December 11, 2019 at 7:30 P.M. During the week prior and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's office at Borough Hall, 120 South Main Street, in the Borough, to the members of the general public who shall request the same.

Sarah D. Walker
Registered Municipal Clerk