

Ordinance 2011-10

*BOROUGH OF HIGHTSTOWN
COUNTY OF MERCER
STATE OF NEW JERSEY*

**AN ORDINANCE AMENDING AND SUPPLEMENTING SECTION 2-19,
ENTITLED “POLICE DEPARTMENT,” OF THE “REVISED GENERAL
ORDINANCES OF THE BOROUGH OF HIGHTSTOWN,
NEW JERSEY.”**

Section 2-19

POLICE DEPARTMENT

Subsections:

- 2-19.1 Establishment; Composition; Chain of Command.**
- 2-19.2 Department Under Control of Borough Council As the Appropriate Authority.**
- 2-19.3 Police Commissioner.**
- 2-19.4 Police Director.**
- 2-19.5 Duties of the Police Department.**
- 2-19.6 Rules and Regulations of Department.**
- 2-19.7 Application; Appointments; Probationary Period.**
- 2-19.8 Uniforms to be Furnished.**
- 2-19.9 Qualifications for Police Officers.**
- 2-19.10 Residency Requirements.**
- 2-19.11 Oath Required.**
- 2-19.12 (Reserved).**
- 2-19.13 Procedure for Implementation of Disciplinary Hearings.**
- 2-19.14 Reimbursement for Legal Costs.**

- 2-19.15 Term of Service.**
- 2-19.16 (Reserved).**
- 2-19.17. Engagement of Services of Off-Duty Police Officers.**
- 2-19.18. Drug Screening Procedure for Applicants and All Employees of the Police Department.**

Editor's Note: Prior ordinance history includes portions of prior 1991 Code §§ 37-1--31-4 [sic], 37-6--37-8, 37- 10--37-14, 37-16; Ordinance Nos. 94-7, 94-12, 19-1994; Ordinance Nos. 1998-7, 2000-04.

Subsection 2-19.1 Establishment; Composition; Chain of Command.

a. *Establishment.* The Borough Council, as the governing body of the Borough of Hightstown, hereby creates and establishes, pursuant to N.J.S.A. 40A:14-118, as an executive and enforcement function of municipal government, a police force which shall be known as the Police Department of the Borough of Hightstown (referred to herein as the "Police Department"). The Police Department shall be governed by the applicable laws of the State of New Jersey, this section of the Hightstown Borough Code, other applicable ordinances of the Borough, and rules and regulations adopted pursuant thereto.

b. *Composition.* Under the supervision of the civilian Police Director, the composition of the Police Department shall be as follows: a maximum of one lieutenant, a maximum of three sergeants, a maximum of ten patrol officers, and any civilian personnel as deemed appropriate by the Borough Council.

c. *Chain of Command.* All necessary orders and directives for the management and regulation of the Police Department shall be given through the chain of command. The chain of command shall be as follows:

1. The Borough Council as the Appropriate Authority, pursuant to N.J.S.A. 40A:14-118;
2. The civilian Police Director;
3. The lieutenant, if one is then serving;
4. The sergeant(s); and
5. The patrol officers.

(Ord. No. 2011-10)

Subsection 2-19.2 Department Under Control of Borough Council As the Appropriate Authority

The Police Department shall be under the control of the Borough Council, which shall serve as the Appropriate Authority pursuant to N.J.S.A. 40A:14-118. Notwithstanding any other provision of this section or any police rules and regulations, the Borough Council, by recommendation of the Police Director, or on its own motion, shall have the authority to institute disciplinary proceedings against members of the Police Department, and to conduct hearings in connection therewith, in accordance with subsection 2-19.13 and the requirements of New Jersey law. Consistent with the directives of the Mercer County Prosecutor or the Attorney General, and subject to the restrictions therein, the Police Director shall be responsible for ensuring that the Borough Council is given prompt and timely notice of all matters wherein disciplinary process is contemplated, considered, called for, or commenced as to any member of the Police Department. Nothing contained herein shall prevent the Police Director from taking emergent action, as the circumstances dictate or warrant. (Ord. Nos. 2011-10, 1998-7)

Subsection 2-19.3 Police Commissioner.

The Mayor shall, as soon as possible after the organization of the Council each year in January, name one (1) of the members of Council as Police Department Liaison, who shall also be known as the Police Commissioner. The Police Commissioner shall act as liaison between the Borough Council and the Police Department, with the assistance of the Borough Administrator, as needed. In the event of any vacancy in the office of Police Commissioner, which the Mayor has not filled within thirty (30) days, the Borough Council shall have the authority, by majority vote, to designate a Council Member to serve as Police Commissioner for the duration of that calendar year. (Ord. Nos. 2011-10, 1998-7)

Subsection 2-19.4 Police Director.

a. *Duties and Responsibilities.* The Police Director shall be the executive head of the Police Department, and shall have authority to manage and oversee the day-to-day operations of the Police Department. The Police Director shall consult and cooperate with the Police Commissioner as needed, and shall be responsible to the Borough Council as the Appropriate Authority. Whenever there is any reference in any law or ordinance or resolution or official document of the Borough to the Chief of Police or Police Chief, such reference shall be deemed to mean the Police Director. The operations for which the Police Director shall be responsible shall include but not be limited to the following:

1. The Police Director shall be responsible for the proper and efficient conduct of all police functions of the Borough of Hightstown.

2. The Police Director shall, consistent with the requirements of applicable statutes and particularly N.J.S.A. 40A:14-118:

(a). Direct the daily operations of the Police Department, including allocating assignments and instruction to police officers and employees of the Police Department;

(b). Establish policies for the operation and administration of the Police Department;

(c). Determine internal organization of the Police Department;

(d). Administer and enforce rules and regulations and special emergency directives for the disposition and discipline of the Police Department and its police officers and personnel;

(e). Prescribe the duties and assignments of all police officers and other personnel;

(f). Delegate his/her authority as he/she may deem necessary for the efficient operation of the Police Department to be exercised under his/her direction and supervision;

(g). Report at least monthly to the Borough Council as the appropriate authority in such form as the Council shall prescribe on the operation of the Police Department during the preceding month, and make such other reports as may be requested by the Council;

(h). Formulate, implement and issue rules and regulations for the Police Department, subject to the procedures set forth in Subsection 2-19.6(a);

(i). Analyze crime trends and statistics to ensure that the Police Department makes the best use of available funds, personnel, equipment and supplies;

(j). Provide police officers and employees of the Police Department with guidance and advice and supervise their work to see that proper procedures are followed, that reasonable standards of workmanship, conduct, and output are maintained, and that desired police objectives are achieved;

(k). Direct the establishment and maintenance of police records and files, and make sure that procedures are followed at all times for the creation, updating, preservation, and oversight of all police records and files, including personnel files;

(l). Issue directives and allocate resources to ensure police protection for public events, hazardous situations or weather conditions, times of emergency and in response to emergent conditions;

(m). Review for administrative purposes reports prepared by police officers and employees;

(n). Prepare the Police Department budget, and keep the Council updated monthly on costs and expenses incurred inside and outside that budget, including overtime;

(o). Evaluate effectiveness of work programs and procedures of all sections of the Police Department and develop effective work methods for police officers and personnel;

(p). Establish and maintain helpful and cooperative relations with the public, groups, organizations, businesses, schools, neighboring municipalities, local and regional law enforcement and emergency services entities, and so forth;

(q). Designate the streets, avenues and areas of the Borough to be patrolled by the police officers;

(r). Determine the days and hours of service of the police officers and other police employees;

(s). Determine the periods of time when the police officers respectively may be off duty to make up for overtime service;

(t). Provide for the proper and timely institution and commencement of disciplinary process, and for the proper and timely conduct of disciplinary hearings in accordance with Borough ordinance and State law;

(u). Perform all duties authorized by law, rule, regulation or prosecutor advisory or other types of opinions, directives or orders.

b. *Civilian Nature of Position of Police Director.* Since the Police Director shall be a civilian position, the Police Director shall not possess regular police powers. This subsection shall not limit or constrain the power or authority of the state Attorney General, or the Director of the Division of Criminal Justice within the Department of Law and Public Safety, or the Mercer County Prosecutor, to delegate or assign such additional responsibilities or powers to the Police Director as the Attorney General, or Director of the Division of Criminal Justice, or the Mercer County Prosecutor may

determine, in the circumstances then presented, to be appropriate or warranted. Under ordinary circumstances, the civilian Police Director shall not be permitted to:

1. Operate a marked patrol vehicle, conduct a motor vehicle stop or answer calls for service;
2. Routinely stop, detain or arrest persons;
3. Wear a law enforcement officer uniform;
4. Be issued a firearm;
5. Approve permits to carry firearms; or
6. Direct the investigation of criminal matters.

c. *Acting Police Director.* In the temporary absence or disability of the Police Director, the Police Director shall appoint a supervisory officer to act on a temporary basis in place of the Police Director under the title of "Acting Police Director," this title to be used only for the duration of the temporary appointment. If the Police Director is unable or unavailable to make this appointment, or if there is a vacancy in the office of Police Director, the Police Commissioner shall appoint the supervisory officer to act on a temporary basis as Acting Police Director. The supervisory officer so appointed by the Police Director (or in his/her absence or unavailability, the Police Commissioner) should be the highest ranking member of the Police Department, unless the Police Director (or Police Commissioner) shall determine in good faith in the circumstances presented that such appointment cannot or should not be made, or that it would not be in the best interests of the Borough. The Police Director immediately shall notify the Council, the Mayor, and the Borough Administrator in writing of any such temporary appointment. The Police Director, as of January 1 of each year, shall publish in writing for the Police Department the order of ranking of the individual members of the department who would be in line to act in place of the Police Director, when needed in emergency, or when so designated by the Police Director.

d. *Department Equipment.* The Police Director shall recommend to the Borough Administrator from time to time the purchase of new equipment or the repair or rearrangement of such old equipment as will improve the Department. The Police Director shall have full oversight responsibility for the charge and control of all apparatus and equipment of the Department and its assignment and use, and shall be held responsible for overseeing its care, cleanliness and safe keeping. The Police Director shall be responsible for ensuring that a supervisory officer of the Police Department shall be designated with possessory authority, responsibility, and accountability for all firearms, weapons, and items of evidence. The supervisory officer so appointed by the Police Director should be the highest ranking member of the Police Department, unless the Police Director shall determine in good faith in the circumstances presented that such appointment cannot or should not be made, or that it would not be in the best interests of

the Borough. If the Police Director is unable or unavailable to make this appointment, or if there is a vacancy in the office of Police Director, the Police Commissioner shall appoint the supervisory officer with oversight responsibility for department equipment.

e. *Qualifications of the Police Director.* The Borough Council shall oversee the selection and evaluation of the individual to be appointed Police Director, with a majority vote of sitting Council Members required to fill the position. The selection and evaluation shall be based upon the following criteria, and the requirements of New Jersey law:

1. Demonstrated possession of a thorough knowledge of the principles and practices of modern police and emergency management administration, modern police science and crime prevention, and the ability to command the respect of officers, support staff and the public, and to plan, assign, direct, supervise and evaluate the performance of officers and personnel.

2. Ten (10) years of experience as a member of a police department or law enforcement agency, or service in the military police in the armed forces of the United States, of which at least five (5) years should have consisted of service in a responsible or supervisory capacity in public administration, public safety administration, or law enforcement administration.

3. College and post-graduate degrees in relevant fields of law enforcement are desirable and will be considered favorably in the selection process. Attendance at and successful completion of a certified and professionally recognized police training course is mandatory.

4. Successful passage of up-to-date physical and psychological tests is mandatory and must be documented as part of the application process by each candidate for the position of Police Director. If selected for the position, that candidate must submit, no more than 45 days before officially commencing the duties of office of Police Director, an updated written evaluation from [a] certified professional[s] documenting that there is no physical or psychological impediment to the adequate and competent performance of the position of Police Director by the candidate.

5. Residence within the State of New Jersey and within a radius of thirty (30) miles of the Borough Police Headquarters.

6. The Borough Council may waive any of the requirements set forth above when, in their judgment, the best interests of the Borough shall be served thereby.

f. *Compensation.* The Police Director's compensation shall be in the amount as shall be fixed annually by Ordinance.

g. *Removal.* The Police Director shall serve at the pleasure of the Borough Council. The Police Director may be removed by a two-thirds (2/3) vote of the Council. The resolution of removal shall become effective three (3) months after its adoption. The Council may provide that the resolution shall have immediate effect; provided, however, that the Council shall cause to be paid to the Police Director forthwith any unpaid balance of her or his salary for the next three (3) calendar months following adoption of the resolution.

(Ord. No. 2011-10)

Subsection 2-19.5 Duties of the Police Department.

a. The Police Director shall take all appropriate and necessary steps to make sure that the Police Department shall:

1. Preserve the public peace, protect life and property and prevent crime; detect and arrest offenders against the penal laws and ordinances effective within the Borough; suppress riots, mobs and insurrections; disperse unlawful or dangerous assemblages; and preserve order at all elections, public meetings and assemblages.

2. Administer and enforce laws and ordinances to regulate, direct, control and restrict movement of vehicular and pedestrian traffic and the use of the streets by vehicles and persons, protect the safety and facilitate the convenience of motorists and pedestrians and make and enforce rules and regulations not inconsistent with the ordinances and resolutions of the Borough for such purposes.

3. Remove or cause to be removed all nuisances in the public streets, parks and other public places of the Borough, inspect and observe all places of public amusement or assemblage and all places of business requiring any State or municipal license or permit and report thereon to the appropriate department.

4. Provide proper police attendance and protection at fires and emergencies.

5. Provide for the attendance of its members in court as necessary for the prosecution and trial of persons charged with crimes and offenses and cooperate fully with the law enforcement and prosecuting authorities of Federal, State and County governments.

6. Operate training programs to maintain and improve police efficiency of the members of the Department.

7. Have in place a chief communications officer who shall be responsible for the administration of police, first aid and fire communications in the

Borough, and who shall report to and remain under the supervision and direction of the Police Director.

b. All police officers and employees shall, at all times, while holding office or appointment under the authority of this section, whether on or off duty, abide by the Constitutions of the United States and of the State of New Jersey.

c. All police officers and employees shall, at all times, while holding office or appointment under the authority of this section, whether on or off duty, show abiding respect for government by complying with all laws, statutes, codes, ordinances, rules and regulations, including those of the State of New Jersey and the Borough of Hightstown.

d. All police officers shall, at all times, while holding office or appointment under the authority of this section, whether on or off duty, conduct themselves as police officers in accord with the oath of office.

(Ord. No. 2011-10)

Subsection 2-19.6 Rules and Regulations of Department.

a. The Borough Council shall have the power, by resolution, to adopt such rules and regulations for the government and discipline of the Police Department as are not inconsistent with New Jersey law or this section. The Police Director shall have the power to adopt such additional rules, regulations, procedures and orders as shall be deemed necessary by her or him to promote the efficiency of the Department. Any such rule, regulation, procedure or order of the Police Director shall be sent immediately to the Borough Administrator and to the Borough Council, and they may be modified or annulled by resolution or motion of the Borough Council.

b. Such rules, regulations, procedures and orders shall be binding upon each member and civilian employee of the Police Department, and copies shall be made available by the Police Director for all such members and employees.

c. Within five (5) days after its adoption, the rule, regulation, procedure or order shall be posted by the Police Director or designee in the Police Department and a copy shall be made available to each member of the Department and to each civilian employee of the Department. The Police Director shall be responsible for ensuring compliance with this procedure.

d. In the event of any inconsistency between this Section 2-19 and the rules, regulations, procedures or orders, the provisions of this section shall control. In the case of inconsistency with any applicable collective bargaining agreement, the provisions of such agreement shall control.

(Ord. Nos. 2011-10, 1998-7)

Subsection 2-19.7 Application; Appointments; Probationary Period.

a. *Application.* Any applicant for the position of police officer of any rank shall make written application therefor on forms supplied by the Borough, to the Police Director, and at the same time shall submit such proofs as shall be required with respect to the qualifications as set forth in said application.

Candidates shall be drawn from an eligibility list established through recognized examination and testing procedures. When deemed appropriate by the Borough Council, vacancies or openings may be publicly advertised.

b. *Procedure for Evaluation and Appointment.* Applications shall be reviewed by the Borough Administrator and the Police Director, along with an ad hoc Police Committee established for the purpose of interviewing candidates and making recommendations to the Borough Council. The Mayor, along with the Borough Administrator, Police Director and Police Commissioner shall be the members of the ad hoc Committee and the Police Commissioner shall be the Chair. The Council may, in its discretion, appoint another member of Council to serve on the ad hoc Committee. Said Police Committee shall then recommend a name or names to the Council, which may determine to conduct interviews itself, prior to confirming employment. In either case, no member of the Police Department shall be appointed prior to consideration by the Council and formal appointment by resolution of the Council.

c. *Probationary Appointment.* No person shall be appointed as a member of the Borough Police Department prior to demonstrating an aptitude for police employment in the Borough of Hightstown for a period of one (1) year, during which time said person shall be known as a probationary police officer. During the probationary period, the appointment as a police officer shall be subject to revocation at any time on written notice by the Police Director for any cause and without any hearing. The probationary period may be extended by the Borough Council, on written recommendation of the Police Director, to a maximum of an additional six (6) months if necessary in order for an officer to successfully complete a police training course as prescribed by law.

For purposes of this subsection, the probationary period for any police officer shall be for a period of one (1) year following the candidate's graduation from a police academy, or if the candidate has prior police experience, said probationary period shall be for one (1) year from the date of employment or from the date of the successful completion of any police refresher courses required to be taken as a condition of employment, which ever shall occur last. No person shall be appointed or promoted to a command or supervisory position above patrolman or patrolwoman unless he or she shall have demonstrated an aptitude for such position, which shall be documented in writing by the Police Director. Candidates for and members of the Police Department shall have all other qualifications prescribed by law.

Upon the completion of the probationary period, the Police Director shall classify the officer as a permanent employee, subject to ratification of same by the Borough

Council, after which time the officer shall be subject to the provisions of New Jersey law with respect to discipline and removal. Prior to achieving permanent status, probationary members shall not be considered as regular or permanent members of the Department.

(Ord. Nos. 2011-10, 1998-7)

Subsection 2-19.8 Uniforms to be Furnished.

Police uniforms shall be furnished to all members of the Borough Police Department and shall, at all times, be and remain the property of the Borough. Upon separation from service for any reason whatsoever, all uniforms and other equipment and accessories furnished by the Borough shall be promptly returned to the Police Director. (Ord. Nos. 2011-10, 1998-7)

Subsection 2-19.9 Qualifications for Police Officers.

No person shall be appointed as a member of the Police Department unless that person is qualified in accordance with the requirements of N.J.S.A. 40A:14-122 and the age requirements set forth in N.J.S.A. 40A:14-127 et seq. College training and/or degrees in relevant fields of law enforcement are desirable and will be considered favorably in the selection process. In particular, no person shall be eligible or qualified to be appointed as a police officer unless, at the time of his/her appointment:

- a. She/he shall be a citizen of the United States and resident of the State of New Jersey.
- b. She/he shall not be less than 21 years of age and shall be sound in body and of good health sufficient to satisfy the Board of Trustees of the Police and Firemen's Retirement System of New Jersey as to her/his eligibility for membership in the retirement system. Age shall not be considered in the promotion of any officer to a higher rank.
- c. She/he shall demonstrate the ability to read and write the English language intelligently.
- d. She/he is of good moral character and shall not have been convicted of a crime or disorderly persons offense that, in the judgment of the Borough Council, would be prejudicial to the morale or the reputation of the Police Department.
- e. She/he must successfully pass the required physical fitness examination, drug and alcohol screening, psychological examination administered by a physician or laboratory of the Borough's choosing and be a successful graduate of a certified police academy as she/he may be assigned by the Borough. Any drug screening, psychological or medical examination or physical fitness examination shall be conducted after a conditional offer of employment or promotion has been made by the Borough.

(Ord. No. 2011-10)

Subsection 2-19.10 Residency Requirements.

a. Findings of Fact. The Borough Council specifically finds that requiring all police officers to be residents of the Borough would seriously impede its ability to establish and maintain competent personnel for its Police Department and would be in violation of N.J.S.A. 40A:14-122.1.

b. Preference in promotions shall be given to residents in accordance with N.J.S.A. 40A:14-122.6, but also shall be based on merit and fairness.

c. Residency in State. Every member of the Police Department shall be a resident of the State of New Jersey in accordance with N.J.S.A. 40A:14-122.8.

(Ord. Nos. 2011-10, 1998-7)

Subsection 2-19.11 Oath Required.

Each member of the Police Department shall, before entering upon the performance of official duties, take and subscribe an oath to bear true faith and allegiance to the government established in this Borough and this State, to support the constitutions of the United States of America and the State of New Jersey and to faithfully, impartially and justly discharge and perform all the duties of office, which oath or affirmation shall be filed with the Clerk. (Ord. No. 1998-7)

Subsection 2-19.12 (Reserved.)

Subsection 2-19.13 Procedure for Implementation of Disciplinary Hearings.

a. Consistent with the directives of the Mercer County Prosecutor or the Attorney General, and subject to the restrictions therein, disciplinary action may proceed only on notice to the Police Commissioner and the Borough Council by the Police Director. Nothing contained herein, however, shall prevent the Police Director from taking emergent action, as the circumstances dictate or warrant. In the event the Police Director recommends to the Borough Council that disciplinary action be taken against a member of the Police Department, the Police Director shall serve or cause to be served upon the member of the Police Department a signed copy of the complaint and/or charges against the members, along with a written notice that a disciplinary hearing shall be scheduled no sooner than ten (10) days nor later than thirty (30) days after the notice is personally served upon him or her; the Borough Council and the member may agree to reasonable postponements. The matter shall be heard and determined before and by the Council at the time and place set forth in the notice. A written copy of the determination of the Council shall be served upon the member of the Police Department as soon as possible, but in no event later than twenty-one (21) days after the hearing. The Mayor shall participate in the hearing, and shall vote to break a tie, if necessary.

The Council, as Appropriate Authority, may determine in certain cases that a matter may be heard by a Hearing Committee acting on their behalf. In such cases and for the purposes of such hearings, the Hearing Committee shall act for the Appropriate Authority. The Hearing Committee shall be comprised of the Mayor, who shall be the presiding officer, the Police Commissioner, and the Borough Administrator. Hearings by the Hearing Committee shall be subject to the procedures set forth in this section. The written findings of the Hearing Committee, acting for the Appropriate Authority, shall be referred to the Mayor and Council for final determination, based upon the record established by the Hearing Committee.

In the alternative, the Appropriate Authority may appoint an independent hearing officer to conduct the disciplinary hearing and make recommendation to the Appropriate Authority for a final determination based on the record of the hearing.

All determinations of the Mayor and Council shall be final.

b. The Mayor and Council shall use Chapter 8 of the Police Rules and Regulations as a nonbinding guideline in the conduct of the hearings authorized herein.

c. All disciplinary actions shall be subject to the requirements and time frames set forth in N.J.S.A. 40A:14-147, et seq.

(Ord. Nos. 2011-10, 2000-04, 1998-7)

Subsection 2-19.14 Reimbursement for Legal Costs.

Where the Borough Council determines that the provisions of N.J.S.A. 40A:14-155 require that the Borough provide a means of defense or reimburse a police officer for legal costs, the hourly rate for which the Borough shall be responsible shall not exceed the hourly rate charged by the Borough Attorney for litigation matters. All statements for professional services submitted by attorneys representing police officers under this section shall be subject to review by the Borough Attorney and review and approval by the Borough Administrator. (Ord. No. 1998-7)

Subsection 2-19.15 Term of Service.

The term of service of any member of the Police Department shall be to the age of sixty-five (65) and shall be calculated as beginning on the date of formal appointment by the Borough Council. If the minutes or records of the Borough Council do not disclose such date, the payroll or other records of the Borough shall be used to determine it. At the age of sixty-five (65) the officer shall be retired by resolution of the Borough Council and his or her services as a police officer shall be at an end; provided, however, that the Borough Council may, in its discretion, continue any officer temporarily in case of emergency, or as the needs and interest of the Borough may require, provided said officer remains qualified for said employment. (Ord. No. 1998-7)

Subsection 2-19.16 (Reserved).

Subsection 2-19.17. Engagement of Services of Off-Duty Police Officers.

a. *Purpose.* To establish a policy regarding the hiring and use of off-duty Hightstown Borough police officers by any entity or person other than the Borough of Hightstown.

1. Members of the Police Department shall be permitted to accept police-related employment only during off-duty hours, only if authorized in writing in advance by the Police Director, and only at such time as will not interfere with the efficient performance of regularly-scheduled or emergency duty for the Borough. The Police Director shall not authorize the use of any Borough police dog for private duty or off-duty service or employment, and such use of a police dog is specifically prohibited.

2. Any person or entity wishing to employ off-duty police officers shall first obtain the approval, in advance and in writing, of the Police Director, which approval shall be granted if, in the opinion of the Police Director, such employment would not be inconsistent with the efficient functioning and good reputation of the Police Department, and would not reasonably endanger or threaten the safety of the officer or officers who are to perform the work, and would not impair the reputation of the Borough of Hightstown, the Hightstown Police Department or its officers.

b. *Insurance requirement.*

1. No party or employer shall employ any off-duty Borough police officer in order to perform the services of security guard, traffic control officer or plain clothes surveillance officer without having first filed with the Borough Clerk a certificate of comprehensive general liability insurance in the amount of not less than \$1,000,000.00 combined single limits for any one occurrence with respect to injuries and damages suffered or caused by Borough police officers while in the employ of the party or employer. The insurance certificate shall list the Borough, the Borough Police Department and municipal officials, representatives and employees as additional insureds.

2. No certificate of insurance required by this section shall be deemed filed with the Borough Clerk unless it has first been approved by the Borough's municipal attorney.

3. Any and all policies of insurance evidenced by any certificate filed hereunder shall be maintained by the party or employer in full force and effect at all times while any Borough police officer is employed by such party or employer. Upon the change or renewal of any such policy of insurance, the party

or employer shall forthwith file with the Borough Clerk a new and current certificate of insurance in compliance with the foregoing provisions.

4. In the event of an emergency, which results in the person or entity being precluded from complying with the requirements of this subsection, the Police Director shall have the authority to waive said insurance prerequisite prior to approving the use of off-duty officers for certain police-related employment.

c. *Hold harmless.* In addition to the aforesaid requirements, the party or employer shall indemnify and hold harmless the Borough, the Borough Police Department and all Borough officials, representatives and employees, from and against any claim, liability, damage or expense that may arise out of or relate to the actions of:

1. Any Borough police officers employed by the party or employer, including any claims concerning the alleged negligence of the Borough's police officers; and

2. The party or employer, its employees, officers and representatives.

d. *Escrow accounts.*

1. Except as provided herein below, any party or employer requesting the services of an off-duty Borough police officer shall estimate the number of hours such law enforcement services will be required, which estimate shall be approved in writing by the Police Director, and shall establish an escrow account with the Chief Financial Officer of the Borough by depositing an amount sufficient to cover the rates of compensation and administrative fees set forth in subsection (f) herein below for the total estimated hours of service.

2. All deposits to the escrow account just described in subsection (1) shall be documented, and no cash will be accepted for this purpose. No officer or employee of the Police Department shall accept any payment in any form from any party or entity other than the Borough, and unless that payment will have been formally and permanently documented by the Chief Financial Officer of the Borough. No party or entity shall give or channel any form of payment or gratuity to any Borough officer, employee, or representative in connection with the services of off-duty officers, but shall use the escrow account described in subsection (1).

3. Prior to posting any request for services of off-duty police officers, the Police Director shall verify that the balance in the escrow account of the party or employer requesting services is sufficient to cover the compensation and fees for the number of hours specified in the request for services.

4. The Police Director shall not post a request for services from any party or employer unless all fees and compensation required in the manner described

above have been deposited with the Chief Financial Officer of the Borough. No officer shall provide any such services for more hours than are specified in the request for services. No officer shall arrange with any party or employer privately, or without the written authorization of the Police Director, to provide such services.

5. In the event the funds in such an escrow account should become depleted, services of off-duty police 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.

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

7. In the event of an emergency, which results in the person or entity being precluded from timely complying with the requirements of this subsection, the Police Director shall have the authority to waive the escrow account prerequisite and approve the use of off-duty officers for certain police-related employment. This waiver shall be limited to the escrow account/prepayment aspect of this subsection. The person or entity requesting the law enforcement services shall remain fully responsible for paying for same. In the event the person or entity requesting the off-duty police services fails to submit payment within 30 days of the approval of the use of the off-duty police officers, the Borough shall not be responsible for paying the subject officers for their off-duty services.

8. Every officer shall have the right to turn down without any penalty any request that she or he work as a private duty or off-duty officer. No officer shall be required to work as an off-duty officer for any party or entity.

9. The Police Director shall keep in view the needs of the Borough for shift coverage in determining whether to approve or to deny any request for off-duty officer services by any party or entity.

e. *Requests for services, and posting of authorizations.* All requests to the Borough for services of off-duty police officers for a period of one week or longer shall be forwarded to the Police Director for posting at least ten days before such services are required. The Police Director may relax this time restriction in the event of an emergency. Requests for services of off-duty officers for periods less than a week may be reviewed by the Police Director on a case-by-case basis, but with denial warranted where the needs of the Police Department, including need to have officers available for additional shifts or for overtime service, are obvious. All of the authorizations issued by the Police Director for services of off-duty officers shall be posted so that the information is available to all officers, and shall be provided in advance to the Police Commissioner. Any police officers, when so employed, shall be treated as an employee of the Borough

provided, however, that wages earned for outside employment shall not be applied toward the pension benefits of police officers so employed, nor shall hours worked for outside employment be considered in any way as compensable overtime.

f. *Rates of compensation; administrative fees; payment for services.* Rates of compensation for contracting the services of off-duty Borough police officers shall be as follows:

1. For all non-traffic assignments, for the first eight hours, the rate shall be \$70.00 per hour for each officer, of which \$15.00 per each hour shall be an administrative fee retained by the Borough.

2. For all traffic assignments, including construction project assignments, for the first eight hours, the rate shall be \$80.00 per hour for each officer, of which \$15.00 per each hour shall be an administrative fee retained by the Borough.

3. After eight hours, the hourly rate for each officer shall increase by \$10, without an increase in the administrative fee.

4. No administrative fee shall be assessed to any Board of Education, schools, or government units or agencies.

5. Any variance from the above rate schedule shall be authorized only after it shall first have been submitted to, reviewed and approved by the Borough Council by resolution.

g. *Use of marked police vehicles.* In the event that a party or employer employs any off-duty Borough police officer pursuant to this section, in addition to any compensation to be paid to the Borough pursuant to the requirements herein, there shall also be a \$15.00 per hour per vehicle fee for the use of marked or unmarked police vehicles.

h. *Penalty.* Any person or entity who employs off-duty Borough police officers in order to perform the above services without first having complied with the requirements of this section shall be subject to the fines set forth section 1-5 of the Borough Code for each day that the party or entity employs any Borough police officer, unless a waiver of said requirements shall have been granted, in writing and in advance, by the Police Director. Any officer or employee of the Hightstown Police Department who provides off-duty services in a manner other than as specified in this section shall be subject to prosecution for violation of the Borough Code, and also for disciplinary process and penalties, including administrative penalties up to and including dismissal, in addition to the penalties set forth in section 1-5 of the Borough Code.

i. *Cancellation policy.* Any private employer who determines to cancel the services of police officers, after entering into a contract, shall be required to provide

notice to the police officers not less than eight hours before the scheduled start time of the assignment. If a contractor fails to provide such notice, the officer shall be entitled to two hours' payment for said assignment, with the administrative fee to be paid as well to the Borough.

j. *Control vested in the Police Director.* The Police Director of the Borough of Hightstown shall be responsible for the overall conduct of the members of the Police Department in following the rules and regulations promulgated herein, and shall insure that the terms, conditions and provisions of this section shall be fully and faithfully carried out. Additionally, the Police Director shall have authority to control officers engaged in off-duty or outside employment pursuant to this section, and shall further have the authority and the duty to commence disciplinary process as to any and all officers so engaged in outside employment by private employers, should cause for such charges arise or exist. The Police Director shall be accountable for the failure to abide by or to enforce the terms of this section as to off-duty employment by police officers.

(Ord. No. 2011-10)

Subsection 2-19.18 Drug Screening Procedure for Applicants and All Employees of the Police Department.

The Police Director shall establish a drug screening procedure, including screening for steroids, for applicants and employees of the Police Department. The drug testing policy shall be reviewed and approved by the Office of the Mercer County Prosecutor. The policy shall be adopted as a part of the Police Department's rules and regulations and shall be amended from time to time so as to insure that applicants to the Police Department and the Department's sworn law enforcement personnel and employees are drug free. The Police Director shall make sure that random and unannounced drug tests are conducted as to every single police officer, with every reasonable precaution taken to ensure the integrity, reliability, and fairness of the screening process and of the individual samples collected, and to ensure the confidence of the public and the reputation of the Police Department. The Police Director shall be accountable for the failure to abide by or to enforce the terms of this section as to all police officers. (Ord. 2011-10).

Section 2. All other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

Section 3. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to that portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable therefrom and shall not be affected.

Section 4. This Ordinance shall take effect following final passage and publication in accordance with the law, but not before September 1, 2011.

Introduced: August 1, 2011

Adopted: August 15, 2011

ATTEST:

Debra L. Sopronyi
Municipal Clerk

Steven Kirson
Mayor