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Title: AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION), CHAPTER 21 (FIRE DEPARTMENT), OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, BY THE ADDITION OF A NEW ARTICLE 7 ENTITLED "CONTRACTED OFF-DUTY EMPLOYMENT" WHICH PERMITS CITY FIREFIGHTERS TO ENGAGE IN OUTSIDE EMPLOYMENT WHILE OFF-DUTY AND ESTABLISHES PROCEDURES AND RATES OF COMPENSATION IN RELATION TO SAME.
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12/2/2015	2	Municipal Council	Close on Public Hearing and Adopt	Pass
11/16/2015	2	Municipal Council	Adopt on First Reading	Pass
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AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION), CHAPTER 21 (FIRE DEPARTMENT), OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, BY THE ADDITION OF A NEW ARTICLE 7 ENTITLED "CONTRACTED OFF-DUTY EMPLOYMENT" WHICH PERMITS CITY FIREFIGHTERS TO ENGAGE IN OUTSIDE EMPLOYMENT WHILE OFF-DUTY AND ESTABLISHES PROCEDURES AND RATES OF COMPENSATION IN RELATION TO SAME.

WHEREAS, the City of Newark ("City") governs the firefighting-related activities and services of the members of the Newark Fire Department ("Firefighters"); and

WHEREAS, the City has an interest in allowing its Firefighters to perform off-duty firefighting-related services for private parties and in regulating the performance of such services in order to ensure that the services are provided in a manner that does not disrupt or **interfere with the orderly operation of the Newark Fire Department.**

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

(Note: **Bold** text represents additions)

SECTION 1. ADOPTION OF ORDINANCE

Title 2 (Administration), Chapter 21 (Fire Department), of the Revised General Ordinances of the City of Newark, New Jersey, 2000, is hereby amended and supplemented by the addition of a new Article 7 entitled "Contracted Off-Duty Employment" as follows:

ARTICLE 7 Contracted Off-Duty Employment

2:21-7.1 Off-Duty Employment of Firefighters.

Members of the Newark Fire Department (“Firefighters”) shall be permitted to accept firefighting -related employment with private individuals and organizations (excluding governmental entities) within the boundaries of the City of Newark during off-duty hours, provided that such off-duty employment does not interfere with the efficient performance of the Firefighter’s duties (whether they be regularly scheduled or emergency duties) for the City of Newark, as determined by the Director of the Newark Fire Department or his or her designee (“Fire Department Director”) in his or her sole discretion.

2:21-7.2 Requests for Services.

a. Any person or entity wishing to employ off-duty Firefighters shall first obtain the permission of the Fire Department Director, which permission shall be granted if, in the opinion of the Fire Department Director, such off-duty employment would not be inconsistent with the efficient functioning and good reputation of the Newark Fire Department, and would not unreasonably endanger or threaten the safety of the Firefighter or Firefighters who are to perform the work.

b. The Fire Department Director is hereby authorized to execute an agreement with the applicant for services requested, 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 the City of Newark. The applicant must first file a request for services with the Fire Department’s Office of Administrative Services. The agreement shall merely constitute permission for the off-duty employment.

c. All requests to the Newark Fire Department for services of off-duty Firefighters for a period of one (1) week or longer shall be forwarded to the Fire Department Director for posting at least ten (10) days before such services are required, except in emergent situations.

d. All requests to the Newark Fire Department for services of off-duty Firefighters for a period of less than one (1) week shall be forwarded to the Fire Department Director for posting within seven (7) days prior to the desired start work date, except in emergent situations.

e. In emergent situations, requests to the Newark Fire Department for the services of off-duty Firefighters shall be made as necessary to the Fire Department Director, who shall use his or her discretion in providing or denying the requested permission, considering the interests of the Fire Department.

f. No Firefighter shall be ordered to accept any off-duty assignment.

g. Firefighters who perform off-duty services in accordance with this Article shall be compensated at the rate set forth in Section 2:21-7.4.

h. Any Firefighter performing off-duty services shall not be considered to be an employee of the City while performing such services, except for purposes of discipline. Any and all wages earned by Firefighters for off-duty service shall not be applied toward the pension benefits of the Firefighters so employed, nor shall hours worked for off-duty services be considered in any way compensable as overtime under the Federal Labor Standards Act, 29 U.S.C. § 201, *et seq.*, or compensable in any other manner that requires the City to pay the Firefighters funds through its payroll system.

i. The Fire Department’s Policies and Procedures shall be revised to be in compliance with this Section.

2:21-7.3 Escrow Accounts.

a. To assure the timely payment of wages to Firefighters who perform off-duty service and to meet the requirements of the Fair Labor Standards Act, the City of Newark will establish an escrow account to be known as the Firefighters Off-Duty Employment Escrow Account, or such other name as assigned by the City's Director of Finance in accordance with appropriate rules and statutes, which account shall be dedicated for the receipt of fees collected from private persons or entities for the payment of wages to Firefighters for off-duty or outside employment services. The Firefighters Off-Duty Employment Escrow Account shall be administered by the City's Finance Department.

b. Any person or entity requesting the off-duty services of an off-duty Firefighter shall estimate the number of hours such services will be required, which estimate shall be approved in writing by the Fire Department Director. Said person or entity shall establish an escrow account with the City's Director of Finance by depositing an amount sufficient to cover the rates of compensation and administrative fees set forth in Section 2:21-7.4 for the total estimated hours or days of service (a day of service is equal to eight [8] hours).

c. Prior to posting any request for off-duty service of Firefighters, the Fire Department Director 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 Fire Department Director shall not post a request for off-duty services from any person or entity unless all fees and compensation required in the manner described herein have been deposited with the City's Director of Finance. All payments must be remitted directly to the City of Newark. No Firefighter shall provide any such off-duty services for more hours than are specified in the request for services.

d. In any instance where the number of hours required is unknown and cannot be reasonably estimated, or are anticipated to be in excess of ten (10) days, the person or entity requesting the off-duty services of a Firefighter shall deposit an amount sufficient to cover the rate of compensation and administrative fees set forth in Section 2:21-7.4 for the equivalent of ten (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.

e. In the event that funds in such an escrow account should become depleted, the off-duty services of the Firefighter(s) shall cease, and further or future such off-duty services shall not be performed or posted until additional funds have been deposited in the escrow account in the manner prescribed herein.

f. The person or entity requesting the off-duty firefighting-related services shall be responsible for ensuring that sufficient funds remain in the escrow account in order to avoid any interruption of services.

2:21-7.4 Compensation, Administrative Fee and Cancellation.

a. The rates of compensation for off-duty firefighting-related services are as set forth below.

1. Monday through Friday (other than holidays).

(a) On Mondays through Friday (other than holidays), the rate of compensation shall be fifty-five dollars (\$55.00) per hour for the first eight (8) hours.

(b) After the first eight (8) hours, the rate of compensation shall be sixty dollars (\$60.00) per hour.

2. Saturday, Sunday and holidays.

(a) On Saturdays, Sundays and holidays, the rate of compensation shall be sixty-five dollars (\$65.00) per hour.

(b) For purposes of this Section, holidays are: New Year's Day; Dr. Martin Luther King Jr.'s Birthday (observed); Washington's Birthday (observed); Lincoln's Birthday (observed); Good Friday; Memorial Day; Independence Day (observed); Labor Day; Columbus Day; Veterans' Day; Thanksgiving Day; and Christmas Day.

b. If an off-duty firefighting-related service takes less than four (4) hours to complete, the Firefighter shall still be compensated in an amount equal to four (4) hours of service.

c. The person or entity to whom the off-duty firefighting-related services are being provided shall also pay to the City an additional fee of ten dollars (\$10.00) per hour to cover the City's administrative costs.

d. If the person or entity requesting the off-duty firefighting-related services wishes to cancel the request, they must contact and advise the Newark Fire Department of same at least two (2) hours prior to the scheduled start-time. If the person or entity wishing to cancel the off-duty firefighting-related service fails to so notify the Newark Fire Department at least two (2) hours prior to the scheduled start-time, then the Firefighter shall still be compensated in an amount equal to four (4) hours of service at the relevant rate.

2:21-7.5 Public Emergency.

a. The Fire Department Director shall have the authority to order any Firefighter providing off-duty services to respond to an emergency situation within the City of Newark. The Fire Department Director shall also have the right to order any off-duty assignment be terminated when the Fire Department Director determines, in his or her sole discretion, that the assignment creates an unacceptable risk to the health, safety or welfare of the Firefighter and/or citizens of the City of Newark.

b. In the event that the Fire Department Director orders a Firefighter providing off-duty services to respond to an emergency situation instead, or otherwise terminates an off-duty assignment in accordance with this Section, the person or entity who was engaging the Firefighter for off-duty services shall only be responsible for the payment of compensation and fees for those hours that the Firefighter actually worked.

2:21-7.6 Insurance Requirements.

a. The individual or entity requesting the off-duty services shall be responsible for providing all insurance coverage as required by the City's Risk Manager. The individual or entity shall provide the City with appropriate Certificates of Insurance naming the City of Newark and the Firefighters as additional insured, and evidencing that the Firefighter and the City are covered by general liability coverage on an occurrence basis of at least one million dollars (\$1,000,000.00) each occurrence and workman's compensation insurance with respect to the off-duty services to be provided.

b. The Certificate of Insurance or the policy shall contain the following language: "The City of Newark, its agents, servants and administrators are included as additional insureds with respect to

general liability coverage as required by written contract."

c. As an alternative, the Fire Department 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 Newark, and the Firefighter as additional insureds under the policies.

2:21-7.7 Indemnification and Duty to Defend.

a. The person or entity requesting the off-duty services 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 Newark, 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 Newark which arise from any acts or omissions of the insured, its agents, or employees arising out of or related to the use of off-duty Firefighters.

b. This Indemnification and Hold Harmless Agreement and the duty to defend shall apply in all instances, whether the City of Newark 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.

SECTION 2. REPEALER

All ordinances or parts of ordinances which are inconsistent with any provision of this Ordinance are hereby repealed to the extent of such inconsistencies.

SECTION 3. SEVERABILITY

If any section, part of any section, or clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this Ordinance. The Newark Municipal Council declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

SECTION 4. EFFECTIVE DATE

This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance permits members of the Newark Fire Department to accept firefighting-related employment with private individuals and organizations (excluding governmental entities) during off-duty hours, and sets forth the procedures to be followed in relation to same. This Ordinance also sets forth the rates of compensation firefighters are to receive for such off-duty employment.