

1-23-13 - 1<sup>st</sup>  
2-20-13 - 2<sup>nd</sup>

Township of Lower, County of Cape May, State of New Jersey

**ORDINANCE #2013-01**

**AN ORDINANCE AMENDING CHAPTER 90, ARTICLES I THROUGH III OF THE CODE OF THE TOWNSHIP OF LOWER – 1975, AS AMENDED (Restating the Establishment of the Police Department)**

**Section 1. Legislative Intent**

**WHEREAS**, the Township of Lower has established a Police Department pursuant to N.J.SA 40A:14-118, known as Chapter 90, Articles I through III of the Code of the Township of Lower – 1975 as amended; and

**WHEREAS**, recently developments in the law of the State of New Jersey require a restatement of the establishment of the Police Department; accordingly,

**BE IT ORDAINED**, by the Mayor and Council of the Township of Lower that the currently existing Chapter 90, Articles I through III of the Code of the Township of Lower – 1975 as amended, be replaced in full with the sections of this Ordinance.

**Section 2.** All appointments to positions within the Police Department extant prior to the date of final adoption of the within Ordinance shall remain in full force and effect and shall not be in any way impacted by the passage of this Ordinance and shall be modified only upon further appropriate action of the Mayor and Council of the Township of Lower.

**Section 3.** Chapter 90, Articles I through III of the Code of the Township of Lower – 1975 as amended, is hereby supplanted and replaced *in toto* with the following provisions:

**Article I. Establishment; Organization**

**§ 90-1. Creation.**

There is hereby created a Police Department for the Township of Lower, County of Cape May, State of New Jersey, the head of which shall be the Chief of Police, and which may consist of up to two Captains; up to three Lieutenants; up to seven Sergeants; up to 36 full-time Patrolmen; and such number of civilian employees as the Township may designate.

**§ 90-2. Appointing Authority.**

The Chief of Police, other superior officers, police officers and employees shall be appointed by the Township Manager from a list of candidates supplied by the Civil Service Commission.

**§ 90-3. Appropriate Authority, Adoption Of Rules And Regulations.**

The appropriate authority, as said term is used in N.J.SA 40A:14-118, shall be the Township Manager of the Township of Lower. The Chief of Police shall be the head of the Police Department and shall be directly responsible for the efficiency and routine day-to-day operations of the Police Department to the Township Manager. The Township Manager shall be responsible for the overall performance of the Police Department. The

Township Manager, with the advice of the Chief of Police, shall adopt and promulgate rules and regulations for the government of the Police Department and for the discipline of its members. The Township Manager, with the advice of the Chief of Police, may from time to time amend and repeal, such rules and regulations, as he may deem necessary for the government and efficient working of the Police Department. Failure to post rules and regulations shall in no way invalidate such rules and regulations.

**§ 90-4. Powers and duties of Chief of Police.**

The Chief of Police shall have the following duties and responsibilities:

- A. Administer and enforce the rules and regulations and special emergency directives for the disposition and discipline of the Department, its officers and personnel.
- B. Have, exercise and discharge the functions, powers and duties of the Police Department.
- C. Prescribe the duties and assignments of subordinates and other personnel.
- D. Delegate such of his authority as may be necessary for the efficient operation of the force to be exercised under his direction and supervision.
- E. Report at least monthly to the Township Manager, in such form as shall be prescribed by the Township Manager, on the operation of the Police Department during the preceding month, and make such other reports as may be requested from time to time by the Township Manager.

The Chief of Police shall be responsible for coordinating all public safety functions in the Township. In this role, he shall coordinate with the local Fire District(s) regarding services and equipment they obtain from the Township to the extent not otherwise provided by law, Resolution or Ordinance. The Chief of Police shall be in charge of the Township's emergency dispatch system and all personnel assigned to the same shall report to him through the Police Department's chain of command.

**§ 90-5. Rules and Regulations.**

The Township hereby authorizes and approves the implementation of the attached Lower Township Police Rules and Regulations adopted by the Township Manager for the purpose of providing a general guideline for the Lower Township Police Department. These rules and regulations shall be followed and enforced in accordance with the laws of the State of New Jersey and any Lower Township Police Department policies and procedures consistent therewith.

**§ 90-6. Special Officers.**

- A. The regular Police Department may be augmented by resolution of the Mayor and Council by the appointment of special officers, to serve at the will of the Mayor and Council during periods of emergency or public necessity.
- B. During their period of service, such special officers shall serve at a salary determined by

the Mayor and Council and shall be governed by and under the rules and regulations of the Police Department, and under the direction and supervision of the Chief of Police.

**§ 90-7. Temporary and Permanent Appointments.**

- A.** Prior to any permanent appointment for an indefinite term in the Police Department, any appointee except a police officer must serve a four month working test period (probationary term), at the expiration of which the appointment shall either be made permanent or terminated or the working test period extended consistent with the then current New Jersey Civil Service Statute and implementing regulations. Temporary and probationary appointments shall be distinguished as such by a written communication to the person appointed setting forth the classification of the appointment, and a copy of the communication shall be entered in the records of the Chief of Police and the Township Clerk.
- B.** Prior to any police officer receiving a permanent appointment for an indefinite term in the Police Department, an appointee must serve a one year working test period (probationary term), after graduation from an accredited basic police training academy, at the expiration of which the appointment shall either be made permanent or terminated or the working test period extended consistent with the then current New Jersey Civil Service Statute and implementing regulations..

**§ 90-8. Appointment and Promotions.**

All applicants for appointment to or for promotion within the Police Department shall be qualified for appointment or promotion as required by law, ordinance and civil service rules and regulations. All applicants for appointment shall be residents of the Township of Lower and must maintain continuous residency within the Township of Lower until the announced closing date of the Department of Personnel examination.

**Article II. Special Law Enforcement Officers**

**§ 90-9. Creation.**

There is hereby created in the Township of Lower the position of Class 1 and Class 2 special law enforcement officers.

**§ 90-10. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**SPECIAL LAW ENFORCEMENT OFFICER:**

Any person appointed pursuant to the Special Law Enforcement Officers' Act (*N.J.S.A. 40A:14-146.8 et seq.*) to temporarily or intermittently perform duties similar to those regularly performed by the members of the municipal police force or to provide assistance to a police force during seasonal periods or in times of emergency.

**§ 90-11. Designation of Classes.**

There shall be two classes of special law enforcement officers employed by the Township

of Lower, pursuant to the Special Law Enforcement Officers' Act:

- A. Class 1. Officers of this class shall be authorized to perform routine traffic detail, spectator control and similar duties. Class 1 officers shall have the power to issue summonses for disorderly persons and petty disorderly persons offenses, violations of municipal ordinances and violations of Title 39 of the Revised Statutes. The use of a firearm by an officer of this class shall be strictly prohibited, and no Class 1 officer shall be assigned any duties which may require the carrying or use of a firearm.
- B. Class 2. Officers of this class shall be authorized to exercise full powers and duties similar to those of a permanent regularly appointed full-time police officer. The use of a firearm by an officer of this class may be authorized only after the officer has successfully completed training as prescribed by the Police Training Commission and has been fully certified.

**§ 90-12. Requirements.**

Each Class 1 and Class 2 special law enforcement officer shall meet, at minimum, the following requirements:

- A. He or she must be a resident of the State of New Jersey during his or her term of appointment.
- B. He or she must be able to read, write and speak the English language with reasonable proficiency.
- C. He or she must have a high school diploma or its equivalent.
- D. He or she must be sound in body and of good health, which must be certified by a physician licensed to practice in the State of New Jersey.
- E. He or she must be of good moral character.
- F. He or she may not have been convicted of any offense involving dishonesty as would make him or her unfit to perform the duties of his or her office.
- G. He or she must successfully undergo the same psychological testing as required of all full-time police officers in the Township of Lower, except officers hired for a seasonal period may alternately undertake a program of psychological testing approved by the Police Training Commission of the State of New Jersey.

**§ 90-13. Appointment and Eligibility.**

The Township Manager of the Township of Lower shall appoint each special law enforcement officer. Prior to each appointment, the Chief of Police must conduct a background investigation in order to ascertain the eligibility of the applicant and must report his findings in writing to the Township Council and the Township Manager. Fingerprints must be taken and filed with the State Police and the Federal Bureau of Investigation.

**§ 90-14. Terms of Appointment; Termination.**

All special law enforcement officers shall be appointed for terms not to exceed one year. Any special officer appointed for a term of four months or more may only be terminated for cause and after a public hearing. Any special officer appointed for a term which is less than four months shall serve at the pleasure of the Township Manager and may be terminated by him without cause and without a public hearing.

**§ 90-15. Hours of Employment.**

A. No special law enforcement officer may be employed for more than 20 hours per week by the Township of Lower, except that special law enforcement officers may be employed by the Township of Lower for those hours as the Township Council may determine necessary in accordance with the limits prescribed below:

(1) Not to exceed 48 hours per week during any seasonal period. A seasonal period, as defined in N.J.S.A. 40A:14-146.9(g), means one period of six consecutive months during the calendar year. It is understood that the Township of Lower qualifies as a resort municipality as defined in N.J.S.A. 40A:14-146.9(f).

(2) Without limitation as to hours during periods of emergency.

(3) In addition to not more than 20 hours per week, including duties assigned pursuant to provisions of N.J.S.A. 40A:14-146.14, a special law enforcement officer may be assigned for not more than 20 hours per week to provide public safety and law enforcement services to another public entity.

B. The Township of Lower may designate one special law enforcement officer to whom the limitations on hours employed set forth in Subsection A of this section shall not be applicable in accordance with N.J.S.A. 40A:14-146.16(c).

**§ 90-16. Restrictions on Appointment.**

No Class 1 or Class 2 special law enforcement officer appointed to serve in the Township of Lower may serve in a similar capacity in any other municipality. No public official with responsibility for setting law enforcement policy or exercising authority over the budget of the Police Department or supervision of the Police Department shall be appointed as a Class 1 or Class 2 special law enforcement officer.

**§ 90-17. Supervision.**

All Class 1 and Class 2 special law enforcement officers shall function under the supervision and direction of the Chief of Police or, in the absence of the Chief, such other chief law enforcement officer as may function in his place and stead.

**§ 90-18. Replacement of Full-Time Police Officer Prohibited.**

Class 1 and Class 2 special law enforcement officers shall be employed only to assist the regularly employed police officers of the Township of Lower and may not be employed to replace full-time regular police officers or in any way diminish the number of full-time officers employed by the Township of Lower.

**§ 90-19. Number of Special Law Enforcement Officers.**

Not more than 10 Class 1 and 12 Class 2 special law enforcement officers may be employed by the Township of Lower at any given time.

**Article III. Off-Duty Police Services**

**§ 90-20. Terms and Conditions for Performance of Extra-Duty Details.**

All patrol officers, sergeants and superior officers ("Lower Township police officers") employed by the Township of Lower Police Department may be permitted to perform extra-duty details for police-related matters for private or public entities subject to all of the following terms and conditions:

- A.** The compensation from the private persons or entities to the Township of Lower police officers shall be fixed at \$60 per hour. In addition, the private person or entity shall also pay the Township of Lower the sum of \$5 per hour worked by each Lower Township police officer to offset the cost of administration. For the use of Lower Township Police Department vehicles, the private person or entity shall pay the Township of Lower the sum of \$50 per day (or fraction thereof), which fee may be waived when vehicles are used by other public entities.
- B.** The Township of Lower shall make arrangements with the person or entity for whom such services are to be provided for the collection of amounts on a periodic basis, which may be weekly, biweekly or monthly. All extra details will be covered by contract between the Township of Lower and the requesting party and contracts will be executed by the Chief of Police and the Township Manager or their designees.
- C.** The Lower Township Police Department shall submit time reports on a weekly, biweekly or monthly basis, as determined by agreement between the private person or entity and the Township of Lower. The private person or entity shall then validate the time reports and submit copies to the Township of Lower Treasurer for payment. An escrow account shall be established with the Township of Lower for the estimated cost of the services based upon the hourly rate set forth in Subsection A above, and all payments to the Lower Township police officer and reimbursement of administrative costs shall be made from such account. In the event that such account falls below a level which is determined by the Township of Lower Treasurer to be reasonably necessary to insure continued payment, no additional services will be provided.
- D.** The Township of Lower shall exercise direction and control over the Lower Township police officers performing work for the private person or entity. The Lower Township police officer assigned to such outside work will remain within the chain of command of the Lower Township Police Department. The Chief of Police shall define the duties to be performed by Lower Township police officers in consultation with the private person or entity and the Lower Township Manager.
- E.** The outside work shall not interfere with the regular duties and scheduling of the Lower Township police officers, including any necessary overtime for police matters. No Lower Township police officer shall be scheduled for any outside work on the same day or within 12 hours of any tour of duty.

F. In order to be eligible for off-duty employment, a police employee must be in good standing with the Department.

**§ 90-21. Written Agreement Required.**

The Township of Lower and the private person or entity requesting the services hereunder shall enter into a written agreement, consistent with the provisions of this article, in form and content satisfactory to the Township of Lower Solicitor, prior to the provision of any services hereunder.

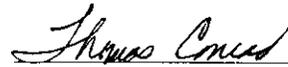
**§ 90-22. Right to Reject Assignments; Discontinuance of Policy.**

- A. Both the Township of Lower and each of the Lower Township police officers reserve the right, in their sole and absolute discretion, to reject any and all assignments for outside work by any private persons or entities contemplated by this article.
- B. The Township of Lower further reserves the right, in its sole and absolute discretion, to modify or discontinue this policy at any time, and it shall be deemed an absolute and unilateral right of the Township of Lower and not an established past practice for collective bargaining purposes.

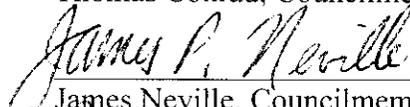
**Section 4.** If any portion of this ordinance is determined to be invalid by a Court of competent jurisdiction, that determination shall have no effect upon the remainder of this Ordinance, which shall remain valid and operable.

**Section 5.** All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, are hereby repealed.

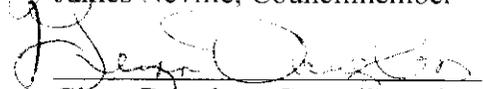
**Section 6.** This Ordinance shall take effect immediately upon final passage and publication as provided by law.



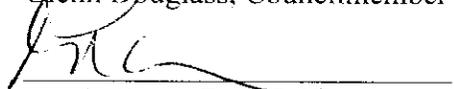
Thomas Conrad, Councilmember



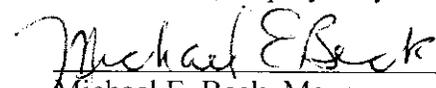
James Neville, Councilmember



Glenn Douglass, Councilmember

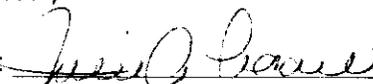


Norris Clark, Deputy Mayor



Michael E. Beck, Mayor

Adopted: Feb 20, 2013

Attest:   
Julie A. Picard, Township Clerk