

ORDINANCE NUMBER 01-19

FIRST READING/INTRODUCTION

ORDINANCE

**BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER II SECTION 14 PUBLIC
DEFENDER OF THE GENERAL CODE OF THE BOROUGH OF EAST NEWARK**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of East Newark, County of Hudson, State of New Jersey, that:

Chapter II, Section 14 of the Borough Code, entitled "Public Defender" shall be amended and supplemented as follows:

2-14 Public Defender.

a. Established.

There is hereby established the Office of the Public Defender of the Borough of East Newark. The Public Defender shall be appointed for a term of one year by the Mayor with the advice and consent of the Borough Council (hereinafter collectively referred to as the "public defender") by resolution within the first seven days of the new Calendar Year, of each year who shall serve until December 31 of said year or until a successor is duly appointed and qualified. The public defender shall be a duly licensed attorney-at-law of the State of New Jersey, in good standing. No person shall hold office as public defender and hold any other office or position in the Borough.

The public defender shall represent indigent defendants in proceedings over which the Municipal Court of the Borough of East Newark has jurisdiction.

The Public Defender shall represent an indigent defendant charged in Municipal Court with a disorderly persons or petty disorderly persons offense, or with a crime as specified in N.J.S.A. 2B:12-18 or with the violation of any statute, ordinance or regulation of a penal nature where, in the opinion of the Municipal Court, there is a likelihood that the person, if convicted, will be subject to imprisonment. The Public Defender shall represent an indigent defendant charged in Municipal Court with a crime as specified in N.J.S.A. 2B:12-18 or, if in the opinion of the Municipal Court there is a likelihood that the defendant, if convicted of any other offense, will be subject to imprisonment or other consequence of magnitude, the Public Defender shall represent an indigent defendant.

All communications between the indigent defendant and the Public Defender or any other attorney appointed to act as a Public Defender shall be fully protected by the attorney/client privilege to the same extent and degree as though counsel had been privately engaged. This shall not preclude the use by a Public Defender of privileged material for the preparation and disclosure of statistical, case study and other sociological data, provided that in any such use there shall be no disclosure of the identity of or means for discovery of the identity of particular defendants.

If there is a vacancy in the Office of Public Defender, if the Public Defender

is temporarily unavailable or if a finding of conflict of interest precludes the Public Defender from representing an indigent defendant, the Conflict Public shall represent the indigent defendant.

In addition to any other means provided by the law for the removal from office of a public official, the Public Defender may be removed by the Borough Council of the Borough for good cause shown and after a public hearing, and upon due notice and an opportunity to be heard. Failure to reappoint the Public Defender for a second or subsequent term does not constitute a "removal from office."

b. Application for Public Defender. An application for the services of a public defender shall be submitted to the municipal court administrator. The maximum fee for said application shall be two hundred (\$200.00) dollars. In accordance with guidelines promulgated by the New Jersey Supreme Court, the Municipal Court Judge may waive any required application fee, in whole or in part, only if he determines at his discretion, upon a clear and convincing showing by the applicant, that the application fee represents an unreasonable burden on the person seeking representation. Said fee may be paid at once, or in installments over a period of four months or less.

Funds collected pursuant to this subsection shall be deposited in a dedicated fund administered by the Chief Financial Officer of the Borough. Such funds shall be used exclusively to meet the costs incurred in providing the services of the Municipal Public Defender including, when required, expert and lay investigation and testimony.

c. Eligibility for Services.

Determination of indigence shall be made by the Office of the Public Defender of the State of New Jersey for those cases handled by the Ocean County Office thereof, in accordance with the criteria set forth in N.J.S.A. 2A:158-14. For all other cases, eligibility for the services of a public defender shall be determined by the municipal court judge on the basis of the need of the defendant. Need shall be measured according to Section 14 of P.L. 1967, c. 43 and guidelines promulgated by the New Jersey Supreme Court.

In the event that a determination of eligibility cannot be made before the time when the first services are to be rendered, or if an initial determination is found to be erroneous, the Municipal Court shall refer the defendant to the Public Defender provisionally, and if subsequently it is determined that the defendant is ineligible, the Municipal Court shall inform the defendant, and the defendant shall be obliged to engage his/her own counsel and to reimburse the Borough for the cost of the services rendered to that time.

The Municipal Court shall make an investigation of the financial status of each defendant seeking representation pursuant to this section, and shall have the authority to require a defendant to execute and deliver written requests or authorizations required under applicable law to provide the Court with access to records of public or private sources, otherwise confidential, as may be of aid in evaluating eligibility. The Court is authorized to obtain information from any public record office of the State or of any sub-division or agency thereof on request and without the fees ordinarily required by law.

Whenever a person entitled to representation by a Municipal Public Defender pursuant to this section is under the age of eighteen (18) years, the eligibility for services shall be determined on the basis of the financial circumstances of the individual and the financial circumstances of the individual's parents or legal guardians. The Borough shall be entitled to

recover the cost of legal services from the parents or legal guardians as provided in this section, and the Municipal Court shall have authority to require parents or legal guardians to execute and deliver the written requests or authorization required under applicable law in order to provide the Court with access to records of public or private sources, otherwise confidential, as may be of aid to it in evaluating eligibility.

If the defendant has or reasonably expects to have means to meet some part, though not all, of the cost of the services rendered, the defendant shall be required to reimburse the Borough, either by a single payment or in installments in such amounts as he/she can reasonably be expected to pay. The Borough shall have a lien on any property to which the defendant shall have or acquire an interest for an amount equal to the reasonable value of the services rendered to a defendant pursuant to this section as calculated at the same rate as the New Jersey Office of the Public Defender bills clients at that time. The Borough may attempt to effectuate such lien and to collect monies due to the Borough all in accordance with the provisions of S-1886 enacted into law on September 23, 1997, as amended."

SECTION II. All ordinances or parts thereof which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of their inconsistencies.

SECTION III. In the event any section, part or provision of this Ordinance shall be held unconstitutional or invalid by any Court, such holding shall not affect the validity of this Ordinance or any remaining part of this Ordinance other than the part held unconstitutional or invalid.

SECTION IV. This Ordinance shall take effect immediately upon its final passage and publication as required by law.