

RESOLUTION 166-21

**RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING
BETWEEN THE BOROUGH OF CLAYTON AND
CHIEF ANDREW DAVIS**

WHEREAS, the Mayor and Council of the Borough of Clayton have negotiated a Memorandum of Understanding with Chief Andrew Davis; and

WHEREAS, the governing body does hereby agree to approve said memorandum of understanding, which is incorporated in and made a part of this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Clayton, County of Gloucester and State of New Jersey that:

1. The Memorandum of Understanding between the Borough of Clayton and Chief Andrew Davis is hereby approved.
2. The Mayor, Borough Administrator or Borough Clerk are hereby authorized to execute the Memorandum of Understanding on behalf of the Borough of Clayton.

ADOPTED at a regular meeting of the Mayor and Council of the Borough of Clayton held on August 12, 2021.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

ATTEST:



CHRISTINE NEWCOMB, Municipal Clerk

CERTIFICATION

I, Christine Newcomb, Municipal Clerk of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on Thursday, August 12, 2021.

CHRISTINE NEWCOMB, Municipal Clerk

MEMORANDUM OF UNDERSTANDING

BETWEEN THE BOROUGH OF CLAYTON AND ANDREW DAVIS

This document is a Memorandum of Understanding ("MOU") by and between the Borough of Clayton ("Borough") and Andrew Davis ("Chief Davis") relating to his employment as Chief of Police of the Clayton Police Department.

WITNESSETH

WHEREAS a dispute arose between the Borough and Chief Davis regarding Chief Davis's work schedule; and

WHEREAS, the Parties desire to amicably resolve their differences and avoid the uncertainty and expense of legal action without incurring further costs; and

NOW, THEREFORE, in consideration of the foregoing, it is hereby agreed by and between the Parties hereto as follows:

1. **Schedule.** The position of Chief of Police is a full-time salaried position and is classified as a Department Head title. The Chief shall work at least forty (40) hours per week and, during the time frame of this MOU, will set his work schedule subject to the requirements below. It is understood that in setting his work schedule, Davis may attend events related to the position of Chief of Police, which include community events, school events, seminars, trainings, meetings, or educational programs of a management or supervisory nature. However, the aforementioned, is subject to the requirements below:
 - A. Chief Davis shall be required to keep time records showing all hours worked. These records shall be provided to the Borough Administrator every two weeks, commensurate with the conclusion of the applicable pay period. Chief Davis may fulfil this requirement by providing a copy of his time card. The Borough reserves the right to make inquiry at any time as to the nature of the work performed for such hours.
 - B. Chief Davis shall notify the Borough Administrator when he will not be physically present at the Police Department during the "core hours", such "core hours" being the Borough's normal business hours of 8:00 A.M. to 4:00 P.M. Monday-Friday and, upon request of the Administrator, shall provide an explanation for same. This does not apply to situations in which the Chief is on approved time off or when notice was not reasonably possible.
 - C. Chief Davis shall be required to attend Council meetings unless otherwise excused by the Appropriate Authority or Chairperson of the Public Safety

Committee. Chief Davis also shall not be required to attend Council meetings when he is on approved time off. The hours attending Council meetings shall be included as part of his weekly work hours.

- D. It is recognized that the availability of the Chief of Police is essential for the proper execution of Borough business and overall public accountability. Accordingly, the amount of hours worked which are not core hours will be subject to regular Borough monitoring to ensure that the Chief remains generally available for the Borough's everyday administrative business as well as the regular public interaction expected of a Chief of Police.
 - E. In circumstances where Chief Davis has satisfied, or will satisfy, his minimum of at least 40 hours for the week, Chief Davis may be permitted to flex his schedule. Where Chief Davis flexes his schedule, he shall not be deemed to be in a "paid", "working", or "on duty" status. However, if Chief Davis must take a work assignment, he should log such time specifically for recordkeeping purposes, and such time will be added to his weekly hours.
 - F. Schedule flexing does not create any "banked time" in any form. It is the functional equivalent of a schedule adjustment. Each week is a new schedule "reset" on the ability to flex the schedule.
- 2. **Term.** This MOU shall have an effective start date of July 9, 2021 and continue for a period of six months, concluding on January 8, 2022. Upon expiration of the initial term, this MOU shall automatically renew for additional successive six month terms unless and until either Party provides written notice of nonrenewal at least ten days prior to the end of the then-current term. If the Term is renewed for any renewal term(s) pursuant to this Section, the terms and conditions of this MOU during each such renewal term are the same as the terms in effect immediately prior to such renewal, unless modified by the parties. In the event either Party provides timely notice of its intent not to renew this MOU, both the Borough and Chief Davis reserve all legal rights as may be applicable. In no event will this MOU survive the conclusion of Chief Davis's employment with the Borough of Clayton, nor shall it be construed to apply to any other past, present or future employees of the Borough of Clayton.
 - 3. **Modification.** This MOU may only be modified by an instrument in writing signed by both Parties to the MOU.
 - 4. **Severability.** Whenever possible, each provision of this MOU will be interpreted in such a manner as to be effective and valid under applicable law, but if any of its provisions shall be held invalid, illegal or unenforceable, this MOU shall be construed as if not containing those provisions and the rights and obligations of the Parties shall be construed and enforced accordingly. Upon a determination that any term or

provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this MOU to effect the original intent of the parties as closely as possible.

5. **Council Approval.** This MOU is subject to approval by the Borough Council before taking effect.
6. **No Waiver or Admissions.** Nothing in this MOU, nor the execution thereof, shall be construed as a waiver of any applicable legal rights, defenses, or arguments of any kind. Nothing in this MOU shall constitute an admission of any kind for purposes of any legal proceedings.
7. **No Past Practice or Precedent.** Nothing in this MOU constitutes a "past practice" or "precedent" of any kind for any purpose. Nothing in this MOU shall be construed to constitute any kind of "past practice" or "precedent".

IN WITNESS WHEREOF, the parties hereto execute the above.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Dated: 8/12/21

ANDREW DAVIS



ANDREW DAVIS

Dated: 8/11/21

Attest by:



CHRISTINE NEWCOMB, Municipal Clerk