

ORDINANCE NO. 2167-16

**AN ORDINANCE REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 25,
DEPARTMENT OF PUBLIC SAFETY, ARTICLE III, FIRE DEPARTMENT, BY THE
BOROUGH OF HAWTHORNE IN THE COUNTY OF PASSAIC
AND STATE OF NEW JERSEY**

BE IT ORDAINED by the Municipal Council of the Borough of Hawthorne, in the County of Passaic and State of New Jersey, that:

Section 1. Chapter 25, Department of Law and Public Safety, Article III, Fire Department, shall be and hereby is repealed and replaced, the said Article as revised and amended to read as follows:

Chapter 25 Department of Law and Public Safety

Article III
Fire Department

§ 25-13	Creation and Establishment
§ 25-14	Composition
§ 25-15	Management; Board of Fire Commissioners
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ARTICLE III
Fire Department

[Adopted 8-18-1993 by Ord. No. 1589 (Ch. 17, Art. I, of the 1989 Code)]

§ 25-13. Creation and establishment. [Amended 6-6-2007 by Ord. No. 1902-07]

A Fire Department of the Borough of Hawthorne, being a division of the Department of Public Safety, be and the same is created and established and equipped within the territorial limits of the Borough of Hawthorne, to be known as the "Hawthorne Fire Department." The use of the fire apparatus of said Borough be and the same is hereby entrusted to Hawthorne Fire Co. No. 1, Hawthorne Fire Co. No. 2, Hawthorne Fire Co. No. 3, Hawthorne Fire Co. No. 4 and Hawthorne Rescue Co. No. 5. The members and officers of said Fire Department shall consist of the members of the aforementioned companies upon the signing of the membership roll of said Fire Department, whereby they promise to perform the duties of fire fighters as prescribed by this article or any other ordinances which may be hereafter adopted and the bylaws of the Board of Fire Commissioners. All changes in the personnel of the Fire Department shall be reported to the Board of Commissioners for its approval.

§ 25-14. Composition.

A. Fire Department. The Department shall be divided into five companies as denoted above.

B. Communications Division. In addition to the five companies, there is established a Communications Division, consisting of not more than ten members, within the Fire Department. Members of the Communications Division shall be as approved by the Board of Fire Commissioners

with eligibility requirements to be established by the Board. Members shall not belong to a company but shall be under the supervision of the Chief of the Department. In the event the Chief chooses not to supervise the members, a designee of the Department appointed by the Board of Fire Commissioners shall serve in his place and stead. The purpose of the Communications Division is to provide support to firefighters at fire scenes or otherwise through operation of the communications equipment of the command and cascade units. The Division shall not have a rank structure. Members of the division as of the effective date of this ordinance shall be eligible for LOSAP and clothing allowance, as described in this ordinance, and shall be eligible to vote in the election of Chief of the Department. Members appointed to the division from and after the effective date of this ordinance shall be eligible for LOSAP but not clothing allowance and shall not be eligible to vote in any departmental election. Notwithstanding the same, any Member appointed after the effective date of this ordinance who completes Fire Fighter One, or any member serving as of the effective date of this ordinance who completes Fire Fighter One, shall be eligible for LOSAP and clothing allowance and shall be eligible to vote in the election of the Chief of the Department. Any Member may be removed for cause by the Board of Fire Commissioners.

C. Auxiliary. An Auxiliary Division is established under the direction of the Board of Fire Commissioners. Member of the Auxiliary Division are to be approved by the Auxiliary in accordance with eligibility requirements established by the Auxiliary and approved by the Board of Fire Commissioners. While no rank structure is permitted, the Auxiliary may organize itself by establishing offices. Members shall not be deemed members of the Department, shall not be eligible for LOSAP or clothing allowance, and shall not be eligible to vote in any departmental election. The purpose of the Auxiliary Division is to provide support to the department. The members shall perform such duties in accordance with the directions of the Chief of the Department or any incident commander. Members of the Auxiliary may be removed in accordance with any policy for removal established by the Auxiliary and approved by the Board of Fire Commissioners or removed by the Board of Fire Commissioners.

D. Junior Firefighters Program. The Board of Fire Commissioners may establish a Junior Firefighters Program for eligible individuals under the age of 18. Rules and regulations establishing such academy, eligibility and membership requirements shall be established by the Board of Fire Commissioners consistent with Federal or State law or regulation. In no event shall any Junior Firefighter be eligible for LOSAP or clothing allowance or take part in any departmental election.

§ 25-15. Management; Board of Fire Commissioners.

- A. The management and control of the Department shall be vested in a Board of Fire Commissioners, which is authorized to adopt bylaws for control, government, management and regulation of said Department such as shall not conflict with this Ordinance. The Board of Fire Commissioners may amend and modify the bylaws from time to time. All such amendments and modifications shall be subject to the review and approval by the Mayor, as Director of the Department of Public Safety, in consultation with the Borough Attorney and only deemed effective upon filing with the Borough Clerk. All such bylaws shall be published on the Fire Department web site or otherwise made available to any person requesting a copy of the same.
- B. Said Board of Fire Commissioners shall be composed of the Chief and five Assistant Chiefs, who shall be elected by their respective companies. Where an Assistant Chief is unavailable to attend any meeting of the Board or otherwise participate in Board business, the next highest ranking officer of the respective company shall serve in his or her place and stead.
- C. The Chief shall be the presiding officer at the meetings of the Board of Fire Commissioners, which shall be held on the first Tuesday of every month except when in conflict with a holiday. In such event, the meeting shall take place on the next Tuesday. Meetings may be held with greater frequency where required.
- D. All business meetings of the Department shall be held in accordance with Robert's Rules of Parliamentary Order and the provisions of the New Jersey Open Public Meetings Act.

§ 25-16. Eligibility for office.

- A. No member of the Department shall be eligible for the election to office unless such member shall have been a member of the Department for at least two years and meets the following requirements by December 31 of the year preceding the election:
 - (1) Chief will have completed two years as an Assistant Chief of the Department.
 - (2) Assistant Chief will have completed one year as Captain on the Department.
 - (3) Captain will have completed one year as First Lieutenant on the Department.

- (4) First Lieutenant will have completed one year as a Second Lieutenant on the Department.
- (5) Second Lieutenant will have served two full years as a fire fighter on the Department, not including time as a probationary fire fighter, and specifically including one year as a driver, and shall be an active member as defined herein.
- (6) No member of the Department shall be deemed eligible to hold office unless he or she shall maintain a minimum call percentage of 33 1/3% and hold a valid drivers license. The failure to maintain such call percentage or maintain a valid drivers license after assumption of office shall result in a vacancy in the office.

B. The Board of Fire Commissioners may establish additional eligibility requirements by way of by-law amendment consistent with the ordinance and in accordance with the procedure set forth above. In addition, the Board of Fire Commissioners may, in its discretion, approve applications for an exception to any of the above eligibility requirements other than those imposed by Federal or State law or regulation. An exception may only be granted where no member of the Company holding an election is eligible for a given office or no member eligible for a given office chooses to accept a nomination for that office.

§ 25-17. Elections.

- A. The election of Chief shall take place on the first Monday in November at the Municipal Building, under the supervision of the Borough Clerk. The Chief will be elected by a majority vote of the active members of the Department, eligible to vote in the election, casting votes. If a runoff election is necessary, it will be held the same day. In the event of a runoff election, the candidate receiving the lowest number of votes shall be dropped from the initial and each succeeding vote until a majority is attained. The Chief shall enter upon the performance of his duties on the first day of January following his election and approval and serve for a term of three years. [Amended 6-6-2007 by Ord. No. 1902-07].
- B. The election of officers of the companies shall take place at the annual meeting (the first meeting in December) at each respective company, by ballot, and no member shall be elected to any office unless he shall have received the majority of all votes cast by active members. The officers shall enter upon the performance of their duties on the first day of January following the election.
- C. The Municipal Clerk, as Election Official in any Chief's Election, may establish such rules as deemed necessary or appropriate by the Municipal Clerk for the conduct of the election. The Clerk of the Fire Board shall present to the Municipal Clerk, not later than October 15th in each year where a Chief's Election is to occur, a complete roster of all members of the department, certified as to each house by the Assistant Chief thereof, with indication as to which members have attained the minimum eligibility requirement to vote in the election. For all other elections, the Fire Board may establish such rules as it deems necessary or appropriate for the conduct of the election.
- D. In order to be eligible for election as an officer of any company, an individual must be a member of that company. The term of Assistant Chief shall be two years. The term of Captain, First Lieutenant and Second Lieutenant shall be one year.
- E. If a vacancy shall occur in the office of Chief of the Department, the longest serving Assistant Chief then serving shall be designated Acting Chief of the Department. If the vacancy occurs on or after September 1 of the year preceding the final year of the term then being served by the Chief, the appointment shall be for the remainder of the term. If the vacancy occurs at any time prior to September 1 of the year preceding the final year of the term then being served by the Chief, the Department shall hold an election, not sooner than 30 days nor greater than 60 days following the vacancy, to elect a Chief to serve the remainder of the term. If any vacancy shall occur among the company officers, the unexpired term shall be filled at the next regular meeting of the company by ballot in the same manner as set forth above.
- F. Any member who may be unable to personally attend the election of Chief or other line officers is eligible to cast one absentee ballot for the candidates of his choice on the first round of the election only.
- G. For purposes of this section, an "Active Member" shall be one who attains the requisite percentage of attendance at all fire calls and mandatory drills for his or her firehouse or for the department, in the case of individuals not assigned to a firehouse, for the year, so as to qualify for Clothing Allowance as set forth elsewhere in this Ordinance. Probationary Members of the

Department as of the time eligibility to participate in the election is established shall not be eligible to vote in the election. The Clerk of the Fire Board shall submit to the Municipal Clerk of the Borough a certified list of members eligible to vote, as set forth above, not later than October 15th of each year in which there is an election. Members on Medical Leave or Military Leave shall likewise be deemed "Active Members" in the same manner as they shall be deemed eligible for a Clothing Allowance. Members on leave who do not qualify for clothing allowance shall not be deemed "Active Members" for this section. In addition, no member on military leave shall be eligible to vote in successive elections while on leave. In no event shall a member who is suspended at the time of the election be deemed an "Active Member" and such member shall therefore not be eligible to vote in such election.

§ 25-18. Membership.

Each of the companies of the Department shall consist of not more than 30 members actively serving in a firefighter capacity, not less than 18 years of age at the time of their acceptance as members, who are residents of the Borough, or reside within a one mile radius of the Borough, and citizens of the United States. It is understood that residents of the Borough shall receive preference over non-residents of the Borough in making appointments to any of the companies. A member who moves to a town bordering Hawthorne may continue his membership if he so desires. A member moving to a non-contiguous town may apply to the Fire Board for a waiver from the residency requirement which may be granted in the discretion of said Board. Such members of the Department shall be approved by the Board of Fire Commissioners. Notwithstanding the same, members on the roster for each Company as of the effective date of this Ordinance shall be deemed members without regard to residence. The Board of Fire Commissioners, by a majority vote, and with the concurrence of the Mayor, may waive the described maximum age limitation and period of residency (as defined by the New Jersey State Firemen's Association). In addition, they may waive the requirement of residency within the Borough in any case where the applicant is regularly employed full-time within the Borough and if found to be available for fire duty.

§ 25-19. Application for membership.

- A. All prospective candidates must request an application, in writing, from the Board of Fire Commissioners. The Board will assign the applicant a company and charge the Assistant Chief of said company to investigate with his committee. Such investigation shall include a background check to be conducted by the Hawthorne Police Department, said investigation to be deemed confidential in nature. The results of the background check shall be reported to the Mayor who may deny the application in his or her discretion or impose limitations on the same. Upon investigation, the applicant will complete an application to the Department and return it to the Board of Fire Commissioners so that it may be processed.
- B. All candidates for membership shall be proposed, in writing, on a regular application form furnished by the Board of Fire Commissioners.

§ 25-20. Transfers.

- A. Any member desiring to transfer his membership from one company to another shall present to the Board of Fire Commissioners a request, in writing, certified by the Secretaries of the companies, showing consent to such a transfer.

§ 25-21. Probationary Term

- A. All members of the Department shall, upon acceptance by the Board of Fire Commissioners as a member, serve a one year Probationary Term. Members serving a Probationary Term shall have all rights conferred upon other members including OSAP and Clothing Allowance but shall not be eligible to vote in any election. Upon successful completion of the Probationary Term, the member shall be deemed a full member of the Department. The Probationary Term of any member may be extended by the Fire Board of Commissioners for an additional six months if the Board determines that the fire fighter requires additional training or experience before completing the Probationary Term. In the event that the Board determines, after such additional six month period, that the fire fighter continues to perform in a manner deemed unacceptable to the Department, then the Board of Fire Commissioners may rescind the appointment to the Department. In the event the Board determines to extend any Probationary Term or rescind membership, it shall send written notice detailing such action to the Mayor within 24 hours of taking such action. The

member so affected may file an appeal of that decision with the Mayor, who shall follow the procedure set forth elsewhere herein regarding grievances in making a determination.

- B. The Board of Fire Commissioners, at the time of acceptance of a member of the Department, may reduce the initial one year Probationary Term to a period of six months where the member has five years or more of fire fighting experience either as a volunteer or paid member of another department and has completed Fire Fighter One. All other provisions set forth above regarding extension of the Probationary Term and rescinding of membership shall apply.

§ 25-22. Meetings.

- A. Each company shall hold at least one meeting each month, the first December meeting to be the annual meeting.
- B. A special meeting of the company may be called by the Assistant Chief with 48 hours' notice given by phone and pager to each company member.
- C. A special meeting of the Board of Fire Commissioners may be called by the Chief, or in his or her absence the longest serving Assistant Chief, with 24 hours' notice by phone and pager to each Assistant Chief, or where unavailable the highest ranking officer of the respective company, and compliance with the Open Public Meetings Act.

§ 25-23. Powers and duties of Chief and subordinate officers

- A. The Chief shall have the general supervision of the Department. The Chief shall report directly to the Mayor as the head of the Department of Public Safety. Each Company shall be under the supervision of an Assistant Chief, who shall be subordinate in rank to the Chief.
- B. The duties and responsibilities of all the Chief, Assistant Chiefs and all subordinate officers shall be established by the Board of Fire Commissioners by way of by-law, adopted in accordance with this Ordinance. No duty or responsibility established by the Board of Fire Commissioners shall be in conflict with this Ordinance.

§ 25-24. Duties of Department members.

In addition to establishing the duties and responsibilities of all officers of the Department, the Board of Fire Commissioners shall establish duties of all members of the Department, provided such shall not be in conflict with this Ordinance.

§ 25-25. Resignations.

No resignations shall be accepted until approved by the Board of Fire Commissioners. A Member of the Department who resigns a Member in good standing who wishes to return to the Department within one year of the acceptance of his or her resignation may return to the Department, upon approval by the Board of Fire Commissioners, without requirement that the individual serve a Probationary Term and without requirement that the Member undergo a physical if the last physical taken by the Member is within the required time parameter for the taking of a physical.

§ 25-26. Discipline and Grievances.

- A. Officers and Members of the Department shall be subject to discipline in accordance with this section and the Personnel Manual of the Borough of Hawthorne. A procedure for imposing discipline shall be established by the Board of Fire Commissioners in the by-laws of the Department, provided however that any discipline involving suspension of more than thirty (30) days, expulsion or any similar penalty of magnitude shall have a right of appeal to the Mayor as head of the Department of Public Safety. In the event the Board of Fire Commissioners imposes a suspension of more than 30 days, an expulsion or other similar penalty of magnitude, it shall deliver written notice of that action to the Mayor within 24 hours of the action being taken, setting forth the nature of the discipline imposed and facts relied upon in imposing the same. The Mayor may grant a stay of suspension or expulsion, in his discretion, pending his or her final determination on appeal. The Mayor shall act on any request for a stay within 48 hours of receipt of a request for stay and written report of the Board of Fire Commissioners. The Mayor may, in making a final determination on

any appeal, and in his or her sole discretion, accept, reject or modify the discipline imposed by the Board of Fire Commissioners.

- B. The Chief of the Department may be removed from office for good cause by the Mayor in the same manner as the Mayor may remove any Department Head from office, in accordance with State statute.
- C. Grievances may be filed by any member of the Department consistent with the Employee Handbook of the Borough of Hawthorne. The Board of Fire Commissioners may nevertheless establish in departmental by-laws a grievance procedure, provided, however, that such procedure shall have as its final step an appeal to the Mayor.

§ 25-27. Leaves of absence.

- A. Any member leaving the Borough for a longer period than 30 days must notify the Assistant Chief of his company and obtain permission for such leave of absence. No leave of absence shall be continued for a longer period than one year.
- B. Members shall be excused from duty for the following reasons when properly substantiated in writing:
 - 1. Sickness or death in the family of a member.
 - 2. Personal sickness.
 - 3. Indispensable business.
 - 4. Military duty.
- C. In the event a member of the Department is elected or appointed to serve as the Mayor of the Borough of Hawthorne, and therefore to serve as Head of the Department of Public Safety, he or she shall take a leave of absence until completing the term as mayor.

§ 25-28. Equipment.

Each member, upon election to membership, shall be presented with Borough equipment, which must be returned upon resignation or expulsion from the Department.

§ 25-29. Apparatus.

- A. No apparatus shall be taken out of the Borough without permission from the Chief. If the Chief is absent from the Borough, permission must be obtained from the Assistant Chief in charge, who will in turn notify the other companies.
- B. Inspection of the Fire Department shall be held as may be determined by the Mayor but not more frequently than once in each calendar year. [Amended 6-6-2007 by Ord. No. 1902-07]
- C. No apparatus shall leave the firehouse unless with at least one active member, unless permission is granted to do so by an officer in charge.
- D. None but members of the Fire Department shall ride on the apparatus without the permission of the officer in charge.

§ 25-30. Repairs and supplies.

All requests for repairs and supplies for the various companies of the Department shall be presented to the Board of Fire Commissioners for approval or recommendation of said Board by the Assistant Chief of such company at the time the monthly report is submitted. In case any apparatus shall become so disabled that immediate repairs are necessary, any member of the company operating such apparatus shall immediately report the condition of the same to the Assistant Chief for him to take up with the Chief, who is empowered to have the same repaired.

§ 25-31. Clothing allowance. [Added 6-15-2011 by Ord. No. 2041-11]

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

BOROUGH — The Borough of Hawthorne.

CLOTHING ALLOWANCE — A sum of money, as determined by ordinance, designed to reimburse certain qualifying members of the Fire Department for wear and tear on their personal clothing based upon criteria established by this section.

FIRE BOARD — The Fire Board of Commissioners of the Borough of Hawthorne.

FIRE DEPARTMENT — The Hawthorne Volunteer Fire Department

FIREFIGHTER — A Member of the Hawthorne Volunteer Fire Department.

A. Clothing allowance. Firefighters serving in the Borough of Hawthorne shall be eligible to receive a clothing allowance, payable each year such member meets the eligibility requirements for such award, the amount of such allowance to be determined by the Municipal Council of the Borough of Hawthorne by ordinance. The clothing allowance shall be determined from October 1st of each year to September 30th of the succeeding year.

B. Qualification for allowance. In order to qualify for the clothing allowance, a firefighter must meet the following eligibility requirements:

- (1) For firefighters having less than six months' experience as a member of the Hawthorne Fire Department, no compensation shall be awarded.
- (2) For firefighters having six months to one year of experience as a member of the Hawthorne Fire Department, a member must have attended not less than 33 1/3% of all fire calls and mandatory drills for his or her firehouse for the year and shall receive a clothing allowance prorated by the total number of months he or she has served during the year.
- (3) For firefighters having more than one but less than 20 years of experience as a member of the Hawthorne Fire Department, a member must have attended not less than 33 1/3% of all fire calls and mandatory drills for his or her firehouse for the year.
- (4) For firefighters having 20 to 24 years of experience as a member of the Hawthorne Fire Department, a member must have attended not less than 25% of all fire calls and mandatory drills for his or her firehouse for the year.
- (5) For firefighters having 25 or more years of experience as a member of the Hawthorne Fire Department, a member must have attended not less than 20% of all fire calls and mandatory drills for his or her firehouse for the year.

D. Records for attendance. It shall be the duty of the Assistant Chief of each firehouse to maintain records of all fire calls and mandatory fire drills as well as attendance by the individual members of the Department and present those records to the Fire Board each year for determination as to which members are eligible for the clothing allowance. In no event shall members be given credit for any other service rendered on behalf of the Department, and only attendance at fire calls and mandatory drills shall be considered in making award of a clothing allowance.

E. Military and medical leave.

- (1) Any member on military leave or on medical leave resulting from an injury related to service as a volunteer firefighter shall be entitled to the full clothing allowance for any given year, provided that member attends the requisite percentage of fire calls and mandatory drills for the time period the member was not on military or duty-related medical leave during the year.
- (2) Any member on medical leave not related to duty as a firefighter shall be entitled to the full clothing allowance for any given year, provided that the member attends the requisite percentage of fire calls and fire drills for the time period the member was not on medical leave during the year, provided that the member served for not less than six months during that year.

- (3) In the case of medical leave for either duty-related or non-duty-related injury or illness, the minimum time period shall be two consecutive weeks. Documentation from a medical provider must be supplied. All requests for medical leave must be approved by the Board of Fire Commissioners.
- (4) No credit shall be given any firefighter on personal leave or suspended from service, and such member may only qualify for the clothing allowance if he or she attends the requisite number of fire calls or mandatory drills for the entire year.

F. Amount of award. The amount of the clothing allowance shall be established by the Municipal Council of the Borough of Hawthorne and set forth in the annually adopted Salary Ordinance of the Borough. The final award of compensation shall be made by the Municipal Council, based upon recommendation by the Fire Board. No service credit may be given for service to any other organization or for firefighting activities on behalf of any other municipality, except in the case of mutual aid rendered by the Borough of Hawthorne.

Section 2. All parts and provision of Chapter 25 not specifically affected by the above provisions shall remain in full force and effect.

Section 3. This Ordinance shall take effect 20 days after final adoption and publication as provided by law.

JOHN N. BERTOLLO
Council President

Attest:
Lori DiBella, RMC
Borough Clerk

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed upon first reading at a meeting of the Municipal Council of the Borough of Hawthorne, in the County of Passaic, New Jersey, held on June 15, 2016. It will be further considered for final passage after public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 445 Lafayette Avenue, in said Borough on July 6, 2016, at 7:00 p.m., at which time and place all interested members of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available on the borough website, www.hawthornenj.org, and at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

Lori DiBella, R.M.C.
Borough Clerk

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF AN ORDINANCE ADOPTED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF HAWTHORNE AT A REGULAR MEETING ON JULY 6, 2016.

ATTEST:

Lori DiBella, RMC, Borough Clerk

John N. Bertollo, Council President

APPROVED:

Richard S. Goldberg, Mayor