

**BOROUGH OF KENILWORTH
ORDINANCE NO. 2013-07**

**Police Department
Chapter 39**

**AN ORDINANCE OF THE BOROUGH OF KENILWORTH UPDATING AND AND
REFORMATING OF THE MUNICIPAL CODE RELATED TO THE POLICE
DEPARTMENT FOR THE BOROUGH OF KENILWORTH**

§ 39. Purpose and Summary

The purpose of this Ordinance is the codification and streamlining all of Chapter 39 related to the Police Department of the Borough thereby addressing its formation, organizational structure and operation. The specific determination of the Appropriate Authority and responsibilities of other individuals within the Department, inclusive of selection of the Chief of Police is set forth so as to promote confidence by civilian oversight of the Department while maintaining the public safety and welfare of the citizens of the Borough of Kenilworth. The ordinance has removed gender specific references and further provides clarification of the Police Department's configuration with regard to who is a regular member of the Department, the procedures for testing for promotions, the equipment required for officers and the responsibilities of certain positions is further elaborated upon requiring regular reporting so as to maintain better and frequent communications between the Borough Council and the Department with at minimum monthly reports and attendance at Council meetings.

Established, Maintenance and Regulations of a Police Department

§ 39-1. Establishment of a Police Department. The Borough of Kenilworth within the County of Union, State of New Jersey created pursuant to the provisions of N.J.S.A. 40A:14-118 et. seq. a Police Department which by this ordinance is ratified as to its existence and operation. The Police Department shall consist of personal under the immediate supervision of a Chief of Police. The structure of the command and the maximum number of ranked police officers within the Police Department shall be limited to the positions as depicted in the Table of Organization in Chapter 15, Section 7-2 of the Borough Code.

§ 39-2. Appropriate Authority Pursuant to N.J.S.A. 40A:14-118. The Mayor is hereby designated as the appropriate authority pursuant to statute N.J.S.A. 40A:14-118 to update, adopt, and promulgate rules and regulations for the government of the Police Department and the discipline of its members. Said rules and regulations shall govern the conduct of and be binding upon the entire membership of sworn officers and civilian employees of the Police Department. Said rules and regulations shall be maintained in a manual form and be maintained by the Chief of the Department and the Borough Clerk.

§ 39-3. Establishment of Police Committee. The Council shall appoint from its own membership annually a Police Committee consisting of three members and shall appoint one of the members of the Police Committee as its Chairperson for the year. The Chairperson of the Police Committee shall be and is hereby designated the Police Commissioner. The Police Commissioner shall have general cognizance and coordination with the Police Department and thereby reporting to the Police Committee and the Borough Council. The Police Committee and the Police Commissioner shall serve at the pleasure of the Council and shall be subject to removal by the Council without cause.

§ 39-4. Ranking of Members of the Police Department

(A) Chief of Police

(B) Police Officers shall rank as follows:

- (1) Captain
- (2) Lieutenant
- (3) Sergeant
- (4) Patrol Officer

(C) Dispatchers, Police matrons and other civilian employees of the Police Department shall not be ranked and shall not be members of the Police Department but shall be governed by the provision of this chapter, state statutes in effect and the Borough's Personnel Manual.

§ 39-5. Patrol Officers - Probationary Period

(A) Each person newly appointed to the Department shall first be appointed as a probationary Police officer for one year from the date of the appointment unless said person has served in another Police Department successfully within the State of New Jersey for a period of no less than one year and has already been certified as a PTC officer. The probationary period for officers with experience may be reduced by resolution for a period of no less than six months. At the termination of said probationary period, the officer shall upon affirmative vote of council become a permanent Police officer which shall require a formal resolution by the Borough Council.

(B) Any officer at the termination of the probation period who fails to obtain an affirmative vote by the Council and an affirmative recommendation of the Chief of Police shall be terminated.

§ 39-6. Age and Physical Requirements

(A) To be appointed as a member of the Police Department, an individual must be between the ages of 18 (unless provided by statute that the individual must be at least 21) and is not more than 35 years of age.

(B) Have passed a physical-fitness examination.

(C) Passed a psychological examination.

§ 39-7. General Requirements

(A) All Police officers and the Police Chief hereafter appointed shall be a citizen of the United States, shall have earned a high school diploma or its equivalent, shall be in sound mind and body of good health, able to intelligently, read, write and speak the English language, of good moral character and have not been convicted of any criminal offense involving moral turpitude.

(B) Upon appointment the officer shall promptly become a resident of the State of New Jersey. During the officer's entire tenure with the department he or she shall maintain their New Jersey residence.

(C) Except as provided by law or collective bargaining contract, any permanent member of the Police Department who shall be absent from duty without just cause or leave of absence for a continuous period of five (5) days, shall at the Borough's sole discretion cease to be a member of the department.

§ 39-8. Selection of a Police Chief. The Mayor is solely responsible for recommending candidates for the position of Police Chief. The selected individual shall be appointed with the advice and consent of the Council. Recommendations for the position of Chief of the Kenilworth Police Department are limited to the current members of the Department who shall have served as a sergeant for at least one year or be of a superior rank.

To be considered for the position, candidates for Police Chief must express an interest in writing to the Mayor and Borough Clerk within ten days after the posting by the Borough Clerk on the Bulletin Board at the entrance to the Municipal Building and on the Web Page of the intent to interview individuals for the position of Chief of Police. Each of those individuals shall be offered the opportunity to be interviewed by the Mayor.

§ 39-9. Appointment and Promotions For Police Officers

(A) The Mayor with the advice and consent of the Council shall nominate all new Police officers to be hired by the Borough.

(B) The Mayor with the advice and consent of the Council shall nominate permanent Police officers for promotion. The Mayor may make the nomination within a reasonable time that a position becomes available and the Borough Treasurer/CFO has determined that sufficient funds exist within the budget. A reasonable period for the Mayor and Borough Treasurer/CFO to make such recommendation and determination shall be within sixty (60) days after a vacancy has been reported to the Council.

(C) If the Borough Treasurer/CFO determines the availability of sufficient funds, and the Mayor fails to nominate an individual within thirty (30) days after the affirmative determination has been by the Borough Treasurer/CFO. Then the Council may nominate an individual for promotion and upon a majority vote with no less than four (4) affirmative votes of the Council an officer may be promoted.

(C) In the event of a promotion to a higher position, the lower rank of the person promoted shall not be considered vacant until such officer so promoted shall express, in writing to the Chief and the Appropriate Authority acceptance of the promotion.

(D) All promotions to a superior position shall be made from within the membership of the Kenilworth Police Department as constituted at the time of such promotion and shall be made based upon the results of the following promotion procedures:

1) Eligibility:

- a. except for the promotion to sergeant, to be eligible for promotion the officer shall be in the current rank for no less than one year within the department;
- b. promotion to the rank of Sgt. requires five or more years of service within the department; and
- c. in the event that no one who meets the foregoing eligibility requirements are found to be satisfactory to the Borough Council for the promotion, then the next lower ranking officer may also be considered eligible for the promotion

2) Notice of Vacancy:

- a. when the Chief of Police is aware of a vacancy or a pending vacancy of a superior officer (other than the Chief) as determined by the table of organization as set forth the Chief shall report to the Police Commissioner that expected date of vacancy;
- b. after the issuance of resolution by the Borough Council approving the administering of a promotional exam, the Chief of Police shall post a memorandum to all personnel and the Borough Clerk describing the position for which a vacancy shall exist. The memorandum shall include a schedule for the administration of a promotional test which shall occur more than thirty (30) days but less than ninety (90) days after the posting of the memorandum of vacancy.

c. Testing Procedures

i. only those department members who have provided a written memorandum to the Chief of Police and the Borough Clerk within thirty (30) days of the posting of the memorandum of their intent to be considered for promotion shall be considered as eligible to take the test;

ii. the Chief of Police with the Appropriate Authority or his/her designee shall prepare a 100 question test which may be true or false and/or multiple-choice questions consisting of the following topics:

1. Kenilworth Police Department rules and regulations.
2. Kenilworth Police Department standard operating procedures.
3. Ordinance for the Borough of Kenilworth.
4. Criminal Code of State of New Jersey (Title 2C).
5. Motor Vehicle laws of the State of New Jersey (Title 39).
6. Attorney General guidelines for law enforcement.
7. Domestic violence laws and procedures.
8. Megan's Law.
9. Duties and responsibilities of the position.
10. Knowledge of cultural diversity and people skills

iii. the written test shall be administered to all eligible individual (who have timely expressed their intent to be considered for the position) at the same date and time with one or more members of the public safety committee observing; and

iv. all tests shall be graded together by the Police Chief and Borough Clerk within fourteen (14) days after the administration of the test and the results made available to the individual participating and the Police Committee for their review.

d. Candidates review and selection.

i. All candidates who have scored 75% or greater shall be considered eligible for promotion;

ii. If the test has been administered within two (2) years prior to the posting the same level position, then only those candidates who had successfully completed the test shall initially be considered and no further test will be administered. Upon recommendation of the Police Chief, the two-year period may be extended for up to one additional year by a resolution of the Borough Council.

iii. The Chief of Police shall review the officer's prior performance, credentials, seniority, and demonstrated ability to work well with the community;

iv. The Chief of Police shall meet with the public safety committee to review and discuss recommendations for promotion. Along with his recommendations, at said meeting he shall make available personnel, disciplinary and reprimand files for all the officers who have scored 75% or greater;

v. The Chief of Police, after meeting with the public safety committee, shall thereafter at a regularly scheduled Council meeting make a recommendation to the Borough Council within 45 days after the completion of the review with the Public Safety Committee

vi. The Council is not bound by the Police Chief recommendation for the promotion, but if the Council elects not to promote the person(s) recommended, the Council may discuss with the Police Chief the reasons for the rejection or reservations associated with the candidate for promotion;

vii. The Council may then promote the applicant so nominated by the Chief of Police, by majority vote or proceed to consider other officers;

viii. In the event that the person selected by the Chief of Police is not accepted by the majority of the Council, the Chief of Police shall select another individual for promotion consideration and advise the public safety committee within thirty (30) days.

ix. Notwithstanding the appointment of promotion procedures set forth herein, the governing body may, in its sole discretion, make promotions to fill vacancies as the circumstances may warrant from any other member of the Police Department.

§ 39-10. Appeals for Testing and Promotions. Within ten (10) days of the posting of the results of the initial promotional tests of candidates, a candidate may file a written letter of appeal if the candidate does not concur with the score posted. Said letter must contain the reason(s) or justification(s) for an appeal and it must be submitted to the Chief of Police, through the appropriate chain of command with a copy to the Borough Clerk. The Chief of Police with the Appropriate Authority will assess the request, and make an initial determination of how the request will be addressed on a case by case basis. Such requests may address the following areas of the promotional process:

(A) Review and re-tabulation of the scored elements of the selection process.

(B) Review any evaluation or internal document that was used in the selection process related to the appellant.

(C) If the appeal impacts upon the results of the promotional determination as determined by the Chief of Police and the Appropriate Authority, the candidate may be permitted to be re-evaluated.

§ 39-11. Duties and Responsibilities of the Chief of Police. Pursuant to N.J.S.A. 40A: 14-118 and municipal ordinance, the Chief of Police shall be the head of the Police Department and shall be directly responsible to the Appropriate Authority for the efficiency and day to day operations of the department. Pursuant to policies established by the Appropriate Authority, the Chief of Police shall be required to do the following and all other related duties of the position:

(A) Administer and enforce all pertinent statutes, ordinances and regulations, including traffic regulations; to promote the peace and safety and protect the persons and property of the citizens of Kenilworth and to cooperate with other offices and agencies of the law in this respect.

(B) Exercise and discharge all the powers and duties of the Police Department as designated by the statutes of the State of New Jersey and delegate such authority as may be necessary for the efficient operation of the Police Department which is exercised under the Police Chief's direct direction and control.

(C) Carry out the lawful orders of the Appropriate Authority and the Borough Council.

(D) Report, in writing, to the Mayor and Police Commissioner at its first regular meeting in each month on the activities of the department, with such other recommendations which will in his opinion, increase efficiency of the department and personally make such other reports as may be requested by the Appropriate Authority and/or the Police Commissioner (NJSA 40A:14-118)

(E) Control the assignment to duty, the discipline and the conduct of all members of the department and make record of and report all delinquencies to the Commissioner. Neglect to report delinquencies shall subject the Chief to charges; as such charges shall be fully inquired into by the governing body when learned or called to the attention of any member of the governing body by any individual whatsoever.

(F) Summarily suspend any member for flagrant violation of the rules, provided said action is in compliance with the Borough Code, state statutes and the contract with the appropriate bargaining unit.

(G) Maintain records of and ensure the preservation and readiness of all the department equipment, apparatus and supplies.

(H) Keep abreast of developments in the files of crime prevention and to initiate and supervise meetings drills, and instruction of department personnel.

(I) Prepare and publish, with the approval of Appropriate Authority, standing orders, regulations and routines governing the department, including standards of uniform and the wearing thereof.

(J) Investigate and examine all applicants for appointment to the department.

(K) Oversee the posting in advance schedules of vacation periods, as may be approved by the Appropriate Authority.

(L) Prescribe the duties and assignments of all members and officers.

(M) Be present at such Borough Council meetings as requested by any member of the governing body.

(N) Publish and maintain an up to date mission statement for the department which is to appear on the Borough's Website.

(O) Maintain public relations with community organizations by frequently attending open meetings and thereafter reporting back to the Police Commissioner

In the absence of the Chief of Police, the duties of the Police Chief shall devolve upon the Captain with seniority of service as a Captain unless the Borough Council designates an interim member of the department to fulfill such duties and responsibilities for a period of up to ninety (90) days.

§ 39-12. Duties of the Captains, Lieutenants and Sergeants. The minimum duties of the Captain, Lieutenants and Sergeants shall be to:

(A) Have immediate charge of patrolman.

(B) Ensure that they are properly instructed and on alert in performance of duty; that they are clean, neat and properly uniform; and that they are relieved properly in accordance with the approved schedule.

(C) Ensure that all department premises and properties are safe, clean and in working order.

(D) Make reports to the member of the department immediately preceding him in rank or, in his absence, to the next superior officer or the Chief.

§ 39-13. The Minimum Duties of Every Regular Member of the Department shall include and be limited to:

(A) Preserve the public peace; protect life and property; detect, arrest and prosecute offenders of the laws of New Jersey and the ordinances of the Borough of Kenilworth; direct and control traffic; provide attendance and protection during emergencies; provide appearances in court; cooperate with all other law enforcement agencies; and provide training for the efficiency of its members and officers. (N.J.S.A. 40A:14-152)

(B) Carry out the policies and orders of the Chief of Police and as specified in the rules and regulations as promulgated

(C) Devote his/her whole time and attention to the service of the department, being expressly prohibited from following any other calling or being engaged in any other businesses, unless he/she receives the consent of the Chief of Police, and before such consent shall be given, the Chief of Police shall be satisfied that the employment shifts or routine schedule of duties not being disrupted; and unless the work is of such a nature that it does not in any degree impair the physical ability or mental alertness of the particular person from properly performing his/her duties as a member of the Police Department. Although certain hours are allocated to regular tours of duty Policeman are considered to be at all times on duty and must respond promptly and anytime their services are required nothing in this subsection shall be considered to prohibit any member of the Kenilworth Police Department from serving on the Kenilworth volunteer fire Department and rescue squad provided that any such Kenilworth Police officers shall only be engaged in Kenilworth volunteer fire department activities while the Police officer is not on a regular tour of duty for Kenilworth Police Department.

(D) Remain on duty until properly relieved.

(E) Watch all persons passing, especially strangers, and if possible, fix in mind such impressions as will enable him to recognize persons accused of crime.

(F) Take notice of all automobiles, truck, and other vehicles especially at night and if anything suspicious is observed to stop same and satisfy himself that they are engaged in legitimate pursuits.

(G) Reported daily any accident or unusual incidents to headquarters in writing.

(H) Duly report all streetlights and traffic control devices that are unlit or in any way out of order.

(I) Report all matters affecting streets, such as openings, obstructions, etc., and see that permits accompany the work and that the proper protection thereof is provided.

(J) Examine all activities to be licensed and report lack of that proper license or failure to conform therewith.

(K) To the utmost of his power, prevent the commission of assaults, breaches of the peace and by his vigilance, render it extremely difficult for anyone to commit a crime.

(L) If on patrol duty, call headquarters on relieving and being relieved.

(M) Have his/her shield and weapon at hand at all times and be always ready to perform such duties as may be required of him/her.

(N) When off-duty, keep headquarters advised as to where and how he may be communicated with.

(O) Keep his/her uniforms cleaned and pressed and his equipment clean and in order at all times.

(P) Testifying for the Defendant. Any employee subpoenaed to testify for the defense or against the municipality or department in any hearing or trial shall notify the appropriate supervisor immediately upon receipt of the subpoena.

(Q) Truthfulness. Employees are required to be truthful at all times whether under oath or not.

(R) Civil Action, Subpoenas. Employees shall not volunteer to testify in civil actions arising out of department employment and shall not testify unless subpoenaed. If the subpoena arises out of department employment or if employees are informed that they are a party to a civil action arising out of department employment, they shall immediately notify the appropriate supervisor.

(S) Civil Depositions and Affidavits. Employees shall confer with the appropriate supervisor before giving a deposition or affidavit on a civil case relating to their police employment.

(T) Civil Action, Expert Witness. Employees shall not volunteer or agree to testify as expert witnesses in civil actions without the prior written approval of the county prosecutor.

§ 39-14. Auxiliary Police - Reserved for Future Inclusion

§ 39-15. Conduct of Members. In addition to Standard Operating Procedures requirements, Members of the Police Department shall not:

(A) Leave their post neither without good and sufficient reason nor without reporting such action to headquarters at the first opportunity.

(B) Converse with citizens or with each other for a period of time exceeding 5 minutes, unless upon Police business.

(C) Lounge or slouch or have coats or shirts unbuttoned when on duty and their shoes shall always be shined.

(D) Smoke when on duty in uniform.

(E) Release any prisoner without due authority nor permit any to escape.

(F) Willfully or through neglect suffers any property of the department to be lost, spoiled, or damaged or wrongfully disposed of.

(G) Enter a public place where intoxicating liquors are sold while in uniform or on duty except in the proper performance of duty.

(H) Consume any intoxicating liquor or intoxicating beverage while in uniform or on duty except in the performance of his/her duties.

(I) Report to duty while being intoxicated or under the influence of a controlled substance so as to interfere with the performance of the duties of a Police officer.

(J) Exercise the authority vested in their position that would be inconsistent with the obligations imposed upon them by their accepting a position as a member of the Kenilworth Police Department.

(K) Commit excessive or unexcused absenteeism from their duties as a police officer.

(L) Be candidate for or hold office in an elective public position or political organization within or inclusive of the jurisdiction in which they are employed unless authorized to do so in writing by the county prosecutor.

(M) Engage in political activity while on duty, or in uniform or so as to impact the operation of the Department.

(N) Engage in polling duties except in the performance of their official duties.

(O) Display or distribute political material on any government property or in their uniform or while exposing their shield or gun. .

(P) Cause to distribute political material as to the municipality of Kenilworth or the County of Union or the State of New Jersey wherein one represents oneself as a member of the police department.

(Q) Abuse the authority or trust delegated to them so as to diminish the public trust in the police department.

§ 39-16. Discipline. Members of the Police Department shall be subject to disciplinary measures as may be reasonably necessary. Reasons for discipline include, but are not limited to any of the following offenses:

(A) Intoxication while on duty or in uniform.

(B) Willfully disobedient of orders.

(C) Indecent or profane or harsh language, immorally or lewdness.

(D) Disrespect to the superior officer in rank or to any member of the Borough Council.

- (E) Unnecessary violence towards prisoners.
- (F) Leaving post without just cause.
- (G) Absence without leave.
- (H) Sleeping on duty or neglect of duty.
- (I) Incompetency, lack of energy or incapacity, mental or physical.
- (J) Committing an offense punishable under the laws or statutes of the United States, the State of New Jersey or any other State, or Municipal Ordinances within the State of New Jersey.
- (K) Disclosing to persons outside the department any confidentially proposed action of the department or any confidential orders of the Chief, Commissioner, Police committee or Borough Council.
- (L) Conduct unbecoming a Police officer or conduct subversive to good order and discipline of the department.
- (M) Absent from post.
- (N) Publically commenting disrespectfully on the official actions of superior officers, members of the Borough Council or other Borough officials.
- (O) Not properly patrolling post.
- (P) Failure to make reports.
- (Q) Untruthfulness, oral or written with regard to their duties as an officer or as a member of the public.
- (R) Recklessly creating a condition without just cause so as to harm an individual or oneself.
- (S) Failure to uniformly apply the laws and regulations of the state without showing favoritism or disrespect to a group or individual based upon race, creed, religion or sexual orientation.
- (T) Soliciting or accepting goods or services from individuals or businesses for less than the same amount paid by the general public because of their position as a Police Officer.
- (U) Violate or disregard department rules and procedure.

(V) Repeated Violations. Repeated violations of the rules of conduct shall be indicative of employees' disregard for their duty and may be cause for dismissal. This shall apply regardless of the type or severity of the offenses.

§ **39-17. Punishment upon Disobedience.** Any members of the Police department who shall willfully disobey any provisions of this article or any rule or regulations duly issued under authority of this article shall be subject to summary suspension by the Chief, and after hearing, if demanded shall be subject to reprimand, loss of vacation days, loss of pay, reduction of rank, suspension without pay, dismissal or restorations to duty, as the Borough Council may, by resolution determine.

§ **39-18. Membership of Certain Organizations Prohibited.** No members of the Police department shall be or become a member of any subversive organization or any organization affiliated with another organization which holds claims or exercises the right to demand of any of its membership obedience to an order to strike or cease work for any cause or to disrupt the government of the United States by violence. Upon satisfactory proof to the Borough Council that any member of the department has violated the provisions of this rule, it shall be the duty of the Borough Council to immediately discharge such member from the department, pending further investigation if challenged within ten days after the discharge.

§ **39-19. Police Training Course Required.** No person shall hereafter be given or accept a permanent appointment as a Police officer in the Borough of Kenilworth unless such person has successfully completed a Police training course at a Police Academy approved and authorized by the Police training commission in the department of Law and Public safety of the State of New Jersey pursuant to the provisions of N.J.S.A. 52:17B-66 et seq. as may be amended.

§ **39-20. Temporary Appointments.** This article shall not prohibit the giving or accepting of a probationary or temporary appointment as a Police officer for a period not to exceed one year provided the person has completed the Police Training Course.

§ **39-21. Prerequisites to Training Course; Leave of Absence.** No person shall be permitted to take a Police training course unless he holds a probationary or temporary appointment as a Police officer in the borough of Kenilworth and such appointees shall be entitled to a leave of absence with pay during the period of the Police training course.

§ **39-22. No Change** All articles, sections, subsections, paragraphs and other provisions of Chapter 39 not specifically affected by the above amendment and modification shall remain in full force and effect.

§ **39-23. Severability** If any section, paragraph, subdivision, clause, sentence, phrase or provision of this ordinance is declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

§ **39-24. Repealer** All Borough ordinances and parts of ordinances that are inconsistent with this ordinance are hereby repealed.

§ 39-25. Effective Date This ordinance shall become effective days after final passage, adoption and publication as required by law.

Introduced: _____

Adoption: _____

ATTEST: _____
Hedy Lipke, Borough Clerk

Mayor Kathi Fiamingo