

BOROUGH OF BUENA

ORDINANCE NO.709

ORDINANCE REPEALING AND REPLACING CHAPTER 223 VEHICLE TOWING AND STORAGE OF THE CODE OF THE BOROUGH OF BUENA

WHEREAS, the Council of the Borough of Buena wishes to provide regulations governing the removal of motor vehicles from private or public property, fees charged for storage following removal, fees charged for such removal, notice requirements and the mercantile licensing of such operators pursuant to N.J.S.A. 40:48-2.49; and

WHEREAS, the Council wishes to set forth non-discriminatory and non-exclusionary regulations governing operators engaged in the business of removing and storing motor vehicles.

NOW, THEREFORE, BE IT ORDAINED that Chapter 223 of the Code of the Borough of Buena is repealed and replaced with a new Chapter 223 Titled TOWING AND STORAGE as follows:

SECTION 1. CHAPTER 223 TOWING AND STORAGE is enacted.

§223-1 Purpose.

It is the purpose of this chapter to provide non-exclusionary and non-discriminatory regulations governing the removal of motor vehicles from private or public property, fees charged for storage following removal, fees charged for such removal, notice requirements, and the mercantile licensing of such operators pursuant to N.J.S.A. 40:48-2.49.

§223-2 Definitions

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

ABANDONED VEHICLE

Any vehicle that is abandoned on or along any highway, other than a limited access highway, or other public property or on any private property without the consent of the owner or other person in charge of the property. A vehicle which has remained on or along any highway or other public property or on any private property without such consent for a period of more than 48 hours or for any period without current license plates shall be presumed to be an abandoned motor vehicle.

AUTO REPAIR FACILITY

Any public garage where motor vehicles are painted and/or repaired.

BASIC TOWING SERVICES

Towing as defined in this section and other ancillary services as may be specified by the Director by regulation.

CLEAN-UP AND REMOVAL COSTS

All costs incurred by the Borough or its agents in the removal or attempted removal of hazardous substances and disposal thereof; or costs for the taking of reasonable measures to prevent or mitigate damage, whether actual or threatened to the public health, safety or welfare.

CONSUMER

A natural person.

DECOUPLING FEE

A charge by a towing company for releasing a motor vehicle to its owner or operator when the vehicle has been, or is about to be, hooked or lifted by a tower, but prior to the vehicle actually having been moved or removed from the property.

DIRECTOR

The Director of the Division of Consumer Affairs.

DISCHARGE

Any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous substances into the water, lands or air of the State of New Jersey.

DISPATCH FACILITY

A place established to transmit requests for towing services.

DIVISION

The Division of Consumer Affairs in the Department of Law and Public Safety

HAZARDOUS SUBSTANCES

The list of hazardous substances adopted by the federal Environmental Protection Agency (EPA) pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, P.L. 96-510 (42 U.S.C. Chapter 9601 et seq.), and amendments thereto, and those substances listed by the NJDEP as environmental hazardous substances pursuant to Section 4 of P.L. 1983, Chapter 315 (N.J.S.A. 34:5A-4), and amendments thereto.

HEAVY DUTY TOW

A tow truck capable of towing large trucks, and shall meet the following minimum requirements: gross vehicle weight, (G.V.W.) 30,000 pounds; towing capacity (GVWR), 80,000 pounds; boom rating, 50,000 pounds; cable size and length, 5/8 inch and 200 feet; equipped with chassis lift under reach retracted rating 25,000 pounds and extended rating 12,000 pounds.

INSIDE BUILDINGS

Any portion of a towing facility that is completely indoors, having one or more openings in the walls for storage and removal of vehicles, and is secured by a locking device on each opening.

JUNKYARD

Any area, lot, land, parcel, building or structure or part thereof used for the storage, collection, processing, purchase, sale or abandonment of scrap metal or other scrap or discarded goods, materials, machinery, or two or more unregistered/uninspected, inoperable vehicles or other type of junk. For purposes of this chapter, an auto repair facility or a towing facility shall not be considered a junkyard.

LICENSE

The period of 24 months.

LICENSES AND INSPECTIONS

The State of New Jersey Licenses and Inspections Agency.

LIGHT- DUTY WRECKER

A tow truck with dual wheels capable of towing passenger cars and shall meet the following minimum requirements of GVW 14,000 pounds; GVWR 18,000; boom rating 8,000 pounds; winch rating 8,000 pounds; cable size and length 3/8 inch and 100 feet; wheel lift retracted rating 6,000 pounds and extended rating 3,000 pounds.

MEDIUM -DUTY FLAT BED

A car carrier of the roll back and tilt type with dual wheels capable of removing and transporting small trucks large passenger cars large sport utility vehicles and full-size vans damage free and shall meet the following minimum requirements; GVW 24,500 pounds; GVWR 28,000 pounds; winch rating 8,000 pounds; cable size and length 3/8 inch and 50 feet; bed length 22 feet; wheel lift retracted rating 6,000 pounds and extended rating 3,000 pounds.

MOTOR VEHICLE

Includes all vehicles propelled other than by muscular power, excluding such vehicles as run only upon rails or tracks and motorized bicycles, motorized scooters, motorized wheelchairs and motorized skateboards.

MOTOR VEHICLE ACCIDENT

An occurrence in which a motor vehicle comes in contact with any other object, including pedestrians, for which the motor vehicle must be towed or removed from the scene thereof.

NIGHT HOURS

Any time between 5:00 p.m. and 8:00 a.m., Monday through Friday, including weekends and holidays.

NONCONSENSUAL TOWING

The towing of a motor vehicle without the consent of the owner or operator of the vehicle.

OUTSIDE SECURED

Any portion of a towing facility that is not indoors and is secured by a fence, wall or other man- made barrier that is eight feet high or as otherwise required by the Borough of Buena Land Use ordinances and is installed with a passive alarm system (e.g., bell ringer located in the gate area to the enclosed facility) or a similar on-site security measure. Fences which are less than eight feet in height which existed prior to the adoption of this chapter shall be permitted; however, if such fences are replaced, the new fence shall be eight feet in height or as otherwise required by the Borough of Buena Land Use ordinances.

PERSON

An individual, sole proprietorship, partnership, corporation, limited liability company or any other business entity.

PETROLEUM OR PETROLEUM PRODUCTS

Oil or petroleum of any kind and in any form, including but not limited to oil petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, and oil mixed with other wastes.

POLICE HOLD VEHICLES

Motor vehicles which are alleged to have been involved in illegal activity, involved in a fatal motor vehicle collision, or any vehicles so designated by a Township of Franklin police officer.

PRIVATE PROPERTY OWNER

The owner or lessee of private property or an agent of such owner or lessee but shall not include a private property towing company acting as an agent of such owner or lessee.

PRIVATE PROPERTY TOWING

The nonconsensual towing from private property or from a storage facility by a motor vehicle of a consumer’s motor vehicle that is parked illegally, parked during a time at which such parking is not permitted, or otherwise parked without authorization, or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. This term shall not include the towing of a motor vehicle that has been abandoned on private property in violation of N.J.S.A 39:4-56.5, provided that the abandoned vehicle is reported to the appropriate law enforcement agency prior to removal and the vehicle is removed in accordance with N.J.S.A 39:4-56.6.

PRIVATE PROPERTY TOWING COMPANY

A person offering or performing private property towing services.

PUBLIC GARAGE

Any building, structure, or property designed and used for equipping, adjusting, greasing, washing, polishing, servicing, or storing of motor vehicles, other than at a junkyard, operated for profit and for service to the public. For purposes of this chapter, a public garage means any general repair garage, specialized repair garage, car wash, auto repair facility, or towing facility.

RESPONSE TIME

Not more than 25 minutes from the time of the initial request by the Dispatch Communications Center to the tow vehicle's arrival at the site of the incident requiring tow services, all traffic regulations observed.

STORAGE CHARGES FOR TWENTY-FOUR-HOUR PERIOD

The maximum allowable amount charged by a towing facility for the storage of motor vehicles for any twenty-four-hour period or fraction thereof.

STORAGE FACILITY

A place for the storing of motor vehicles.

TOWING

The moving or removing from public or private property or from a storage facility by a motor vehicle of a consumer's motor vehicle that is damaged as a result of an accident or otherwise disabled, recovered after being stolen or is parked illegally or otherwise without authorization, parked during a time at which such parking is not permitted or otherwise parked without authorization, or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. Dues or other charges of clubs or associations which provide towing services to club or association members shall not be considered a service charge for purposes of this definition.

TOWING FACILITY

Any public garage that offers towing services.

TOWING OPERATOR

Any entity that operates a towing business or tow vehicle.

TOWING SERVICE

The removal and transportation of a motor vehicle from a highway, street, other public or private road, parking area, storage facility and from other off-road locations such as fields, lakes, rivers and streams. This includes other services such as roadside assistance.

TOW VEHICLE

Those vehicles equipped with a boom or booms, winches, slings, tilt beds, wheel lifts or under-reach equipment specifically designed by the vehicle manufacturer for the transport of motor vehicles.

TOW VEHICLE'S BASE OF SERVICE

The tow operator's principal place of business where the tow vehicle is stationed when not in use.

ZONING OFFICIAL

It shall be the duty of the Zoning Official of the Borough of Buena to carry out the provisions of this chapter.

§223-3. License Term.

All licenses issued under this Chapter shall be effective for a period of two years from the date of issuance. All licenses shall expire automatically; applications for renewal thereof shall be submitted not less than six weeks prior to date of expiration.

§223-4. Issuance of license.

All applicants for a license shall submit an application in accordance with section 223-5 to the Borough Clerk. The Borough Clerk shall transmit the application to the Township of Franklin Police Department for investigation of the truth and accuracy of the information contained therein. Upon completion of the investigation, the officer in charge shall forward a recommendation for approval or

disapproval of the license and the reasons, if any, for disapproval to the Borough Clerk. If the officer in charge finds that the applicant has met the requirements of this section, a license shall be issued to the applicant and the applicant's name placed at the end of the towing list.

§223-5 Licensing procedure.

A. Minimum standards of operator performance. All applicants must be able to meet the following minimum standards of performance:

- (1) Applicants must be appropriately licensed by the State of New Jersey.
- (2) Applicants must be able to reach the scene of a vehicle to be towed within 25 minutes.
- (3) Applicants must be equipped to provide service during their scheduled frame of duty.
- (4) Applicants must submit to a background check by the Township of Franklin Police Department.
- (5) With respect to the storage of towed vehicles, the applicant shall:
 - (a) Demonstrate sufficient storage capacity for a minimum of five vehicles. Storage area shall be at the applicant's place of business;
 - (b) Accept responsibility for the safe storage of towed vehicles;
 - (c) Have access to a storage facility 24 hours a day, 365 days per year, and shall provide access to the public to such facility during normal business hours.
- (6) All towing applicants shall be capable of providing reasonable roadside services to disabled vehicles, such as, but not limited to, jump starting, the changing of flat tires, and providing motor fuel. Such services will only be performed if they can be done so safely, as determined by the police officer on scene.
- (7) Applicants must agree that, in addition to towing services, they will provide limited site cleanup of glass, debris, etc., at the site such that the roadway will be safe to travel and no unsightly material will be left on the roadside.
- (8) Applicants must provide proof of adequate insurance as provided in this chapter.

B. License application required. An application for license shall be in writing, upon a license application form furnished by the Borough Clerk signed by the applicant and filed with the Borough Clerk. Said application shall contain the following information:

- (1) The name, business address, business name and telephone number of the towing operator.
- (2) The location of the towing operator's towing facility.
- (3) The name of the towing operator's insurance company and insurance policy number. Proof of insurance must be provided as required under this chapter.
- (4) The type, condition and design of the vehicles and equipment available for service.
- (5) Communication availability, including radio communications, and the location and availability of the dispatch center.
- (6) The name, address and driver's license number of each driver or operator of the tow vehicle.

(7) Proof that each vehicle to be licensed is duly registered and inspected by the State of New Jersey, Division of Motor Vehicles, as a tow vehicle.

(8) If a corporation applies, the application shall be signed in the name of the corporation by the president and attested by the secretary.

(9) Said application shall be duly verified by the applicant before a notary public or some other person duly authorized to administer oaths.

(10) Each such application shall be accompanied by the full amount of the license fee hereafter prescribed.

(11) A certification granting permission to the Township of Franklin Police Department to conduct inspection of the applicant's vehicles, equipment and storage facility for the purpose of determining compliance with this Chapter.

(12) Documentation evidencing that a criminal background check was conducted of each driver or operator of the tow vehicles, which background check shall have been performed not more than 12 months preceding with documentation of criminal background checks being supplied of said drivers or operators in not more than twelve-month intervals.

(13) A plot plan of the tow operators' premises. A plot plan shall consist of the following:

- a. Be drawn neatly and to scale;
- b. Indicate the entire lot for which the application is being made;
- c. Contain a symbol indicating the direction north;
- d. Indicate the name of all streets and ways upon which the lot is located, street addresses and the location and type of existing and proposed street fixtures such as utility poles, street lights, traffic lights and signals;
- e. Indicate the name of the nearest intersecting street and the distance from the facility to the intersecting street;
- f. Indicate with dimensions, all parking and storage areas with measurements of distance from buildings and property lines as well as indicating where fencing is located for the security and safety of stored vehicles;
- g. Indication of all driveways, curb cuts and any easements on the property;
- h. Indicate the lot and block number of the subject property and all adjacent properties; and
- i. If there are any modifications intended to be made to the plot plan, said modification and change must be submitted and to the extent required by New Jersey Municipal Land Use Law, approved through the appropriate action of the Borough of Buena Land Use Board.

C. Zoning. No license shall be issued to a towing operator/owner located in the Borough of Buena unless the applicant's towing facility is located within a zoning district where such use is permitted in accordance with the Borough of Buena Land Use Ordinances or unless a use variance has been obtained therefore, and any and all land use approvals and/or permits have been obtained therefore, or unless sufficient crews are provided by the applicant that said facility was operated at its present location prior to the adoption of the Borough of Buena Land Use Ordinance.

D. Compliance. The applicant shall comply with any and all state, federal and local laws, regulations and ordinances pertaining to safety, lighting and towing equipment, and shall be subject to inspection at any time by the Township of Franklinville Chief of Police or a designee and the Borough of Buena.

E. Assignment. The towing operator shall at no time transfer or assign a license or any part thereof for any purpose whatsoever without having first obtained prior approval from the Borough of Buena.

F. Fee. An application fee of \$150 shall be submitted with each application.

§223-6. Recommendation of approval or disapproval. Appeal

- A. Upon completion of the aforesaid investigation, the Township of Franklin Chief of Police or designee shall file a written report as to the findings and issue a recommendation of approval or disapproval to the Borough Clerk.
- B. If the Township of Franklin Chief of Police recommends that the towing operator not be approved, a written report shall be filed with the Borough Clerk specifying the findings and the reasons for the rejection. The Borough Clerk will furnish a copy of the report to the towing operator by certified mail.
- C. Any towing operator who is denied a license may, after receipt of notification, file an appeal in writing within 10 days with the Borough Clerk. The Borough Clerk shall then schedule a hearing before the Public Safety Committee. After that hearing, the Committee may then determine whether to approve or disapprove the license based on the requirements of this chapter.

§ 223-7. Suspension or revocation of license.

A license may be revoked or suspended at any time for just cause by the Township of Franklin Chief of Police or by the Borough of Buena for violations of any provisions of this chapter or for violations of New Jersey state law. Once the licensee is notified of the suspension or revocation, the licensee has the opportunity to be heard by the Public Safety Committee after filing a written appeal within 10 days with the Borough Clerk. Such license, when so suspended or revoked, shall not be reinstated except for good and sufficient cause.

§228-8. Tow List.

- A. The list of licensed towing operators shall be maintained by the Township of Franklin Police Department and the Borough of Buena and shall be utilized on a rotation basis. The rotation shall be on a weekly basis beginning at 12:00 midnight Saturday night and ending one week later at 12:00 midnight Saturday night unless otherwise specified by the Township of Franklin Police Department or Borough of Buena or in the event of emergency conditions.
- B. There will be a maximum number of light/medium duty tow operators of four, and of four for heavy- duty tow operators permitted to perform work within the Borough of Buena (as defined in this chapter). Replacement of tow operators on the current list may only occur when there is a vacancy, provided that the replacement tow operators meet all the requirements set forth within the application process in this chapter.
- C. Any newly approved operators shall be added to the bottom of the rotation list and any adjustments to the rotation schedule are to be made on January 1 of the following year.

D. Calls to operators on the rotating list shall be made on a nondiscriminatory basis, routinely succeeding to the next operator listed.

§223.9 Services to be performed by licensed towing operators.

A. Removal and transporting of motor vehicles involved in a motor vehicle accident where the owner or operator of the motor vehicle, when appropriate, has not made a preference for the towing of the vehicle.

B. Removal and transporting of a motor vehicle from private or public property as may be directed by an authorized law enforcement officer or Zoning Officer of the Borough of Buena.

C. Removal and disposal from the Borough or private property motor vehicles which, pursuant to state law and regulations, would be subject to the jurisdiction of the Township of Franklin Police Department and the Borough of Buena.

D. The storage of a motor vehicle removed and transported from the scene of a motor vehicle accident.

E. A towing operator responding to a tow shall be responsible for all site cleanup related to a motor vehicle accident, including the pickup and removal of all debris from the scene of the accident and containment of any hazardous fluids from the vehicle prior to tow, in accordance with the laws of the State of New Jersey, and all services as defined by state regulations and all sections herein. It is understood that the responsibility of the tow operator as established above in no way relieves the vehicle owner of his responsibility for the cleanup and removal of any debris or spilled fluids coming from his vehicle.

F. A towing operator shall provide either one boom tow truck with a wheel lift or winch rollback or one-boom tow truck with a wheel lift capable of transporting the vehicle to be removed without additional damage. The transported vehicle shall not exceed the carry weight or capacity of the carrying vehicle.

G. The towing operator shall ensure the proper utilization and deployment of safety devices as more particularly defined herein.

H. If a licensed towing operator is unable to handle a particular situation for whatever reason, the Borough shall have the right to use whatever means necessary to accomplish the removal, transporting and storage of motor vehicles.

I. No towing operator shall subcontract any work to be performed pursuant to this chapter without having first obtained prior written approval from the Franklin Township Police Department and Borough of Buena. Subcontractors must be licensed and on the current Tow List. Any towing operator to whom approval to subcontract work has been given shall be responsible for the services performed by and the acts and omissions of the subcontractor, and shall remain liable for any violation of this chapter by the subcontractor.

§223-10 Responsibility of Towing Operators.

A. The towing operator shall provide a towing facility of sufficient size to accommodate not less than 5 passenger vehicles and one tractor and trailer, and not less than 800 square feet of inside storage facilities to hold and protect “police hold” vehicles. At no time shall any automobile towed by a towing operator be stored at any other location, except where a vehicle is towed at the request of the owner to a specific location.

B. The towing operator shall provide tow vehicles capable of handling the transporting of motor vehicles as defined in §223-1 of this chapter.

C. The towing facility shall be staffed by the licensed towing operator during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, and include

twenty-four hour telephone service, seven days per week, during the week in which the licensed facility is on call.

D. Each tow vehicle or flatbed vehicle shall be equipped with towing and safety equipment, warning devices such as lights, flares and flags to warn other automobile operators of the presence of a disabled automobile, and mechanics tools to perform complete emergency work, including but not limited to the following. All tow operators shall be required to wear a reflective jacket or vest when towing vehicles on the roadway and at all times shall exercise extreme caution and due safety.

E. All tow trucks must be in compliance with all safety equipment requirements as listed in N.J.S.A.39:3-1 et seq., and 49 CFR 393.

F. No changes may be made to tow vehicles, facilities or equipment without prior written approval of the Franklin Township Police Department and the Borough of Buena.

G. If issued at the discretion of the Borough in accordance with this chapter, each tow vehicle shall display any licensure stickers issued by the Borough Clerk on the driver's door panel and shall have the name and number of the licensed tow operator displayed on the vehicle in such manner and of such lettering as to conform to the provisions of N.J.S.A. 39:4-46.

H. Towing operators and their employees shall provide all services required by this chapter at all times and shall be subject to the following requirements:

- (1) Possess sufficient knowledge, skill and ability to provide minimum road services for disabled vehicles and to adequately remove a vehicle from an accident scene without causing additional damage to the vehicle.
- (2) Not have any impairment which would prohibit towing operators and their employees from performing the duties and obligations set forth in this chapter.
- (3) Obey all traffic laws, statutes, regulations and ordinances promulgated by the State of New Jersey and the Borough of Buena.

I. The tow vehicles provided by the towing operator shall be of such type and design to properly and safely perform all towing services required by this chapter and shall at all times comply with New Jersey Statutes and Regulations and be subject to inspection by the Township of Franklin Chief of Police or designee.

J. All drivers of tow vehicles shall possess at all times a valid New Jersey driver's license and a commercial drivers' license where applicable, which shall be subject to inspection by the Township of Franklin Chief of Police. Said operator shall obey all traffic laws and shall comply with all statutes and regulations of the State of New Jersey and of the Borough of Buena.

K. The tow vehicles provided by the towing operator shall be geographically located so as to permit a response time within 25 minutes of being dispatched as herein set forth.

L. At all times the towing operator shall maintain the towing facility in a clean and orderly fashion. Reasonable measures shall be taken by the towing operator to prevent vandalism, theft or damage to automobiles stored therein.

M. In the event that motor vehicles which are towed and stored by the towing operator are abandoned or unclaimed by the owners thereof, the towing operator shall make no claim against the Borough of Buena, its agents or employees. Only those vehicles towed from private property or public rights-of-way under authorization of either the Borough or an authorized law enforcement officer, not including accident vehicles, shall be

disposed of by the Borough of Buena, pursuant to N.J.S.A. 39:10A-1 or other appropriate state statute or state regulations.

N. The towing owner/operator, operating pursuant to this chapter, is an independent contractor, and in no part an agent, servant or employee of the Borough of Buena. Said owner/operator shall at all times maintain direct supervision, management and control over all of its employees and personnel engaged in the operation or services performed pursuant to this chapter.

O. Towing operators approved for Tow List eligibility shall be required to fulfill tow requests of the Zoning Officer and/or any authorized law enforcement agency or officer. Failure or refusal to remove a vehicle pursuant to this chapter shall be cause for removal from the approved Tow List.

P. The tow operator shall be responsible for ensuring the proper, safe and secure storage of all vehicles towed. The tow operator shall be liable for any and all damage incurred by such vehicles while in transit to or while stored in or at the facilities of the operator.

§223-11. Insurance.

A. A towing company shall carry insurance of the following types with the minimum policy limits noted for each type:

- (1) Automobile liability insurance in the amount of not less than 1 million dollars.
- (2) Workers' compensation in the minimum amounts required by law.
- (3) Garage keepers' liability coverage of not less than \$100,000.00 per location.
- (4) Garage liability including cargo insurance in an amount of not less than \$500,000.00 combined single limit.
- (5) Comprehensive general liability coverage of 1 million dollars combined single limit coverage.

B. Policies shall be endorsed to provide for collision coverage for vehicles in tow.

C. The Borough of Buena shall be named as an additional insured on all policies.

D. Proof of coverage shall be provided to the Borough and the policies shall provide that the Borough be notified in the event of the tow operator's failure to pay premiums or in the event of cancellation, termination or revision of the policies or amounts of coverage.

E. In the event the Borough deems, in its direction, that appropriate coverage is not in place, the contractor shall be so advised and shall be removed from the towing list until such time as appropriate coverage is restored.

§223-12. Indemnification.

The contractor shall agree to indemnify and hold the Borough, its officers, appointees, elected and appointed officials, employees, representatives or agents, whether paid or unpaid (including, without limitation, members of the Township of Franklin Police Department) harmless against any and all liability or claims of liability for damage or injury to persons or property resulting from the towing services provided by the contractor pursuant hereto, with the exception of damage or injury to persons or property resulting solely from the willful or negligent acts or omissions of such officers, appointees, employees, representatives or agents.

§ 223-13. Consent required for towing from privately owned property.

A. No person shall tow any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from any privately owned parking lot, from other private property or from any common driveway without the consent of the motor vehicle owner or operator, unless:

(1) The person shall have entered into a contract for private property towing with the owner of the property;

(2) There is posted, in a conspicuous place at all vehicular entrances to the property which can easily be seen by the public, a sign no smaller than 36 inches high and 36 inches wide stating:

(a) The purpose or purposes for which parking is authorized and the times during which such parking is permitted;

(b) That unauthorized parking is prohibited and unauthorized motor vehicles will be towed at the owner's expense;

(c) The name, address, and telephone number of the towing company that will perform the towing;

(d) The charges for the towing and storage of towed motor vehicles;

(e) The street address of the storage facility where the towed vehicles can be redeemed after payment of the posted charges and the times during which the vehicle may be redeemed; and

(f) Such contact information for the Division of Consumer Affairs as may be required by regulation;

(3) The property owner has authorized the person to remove the particular motor vehicle; and

(4) The person tows the motor vehicle to a secure storage facility that is located within a reasonable distance of the property from which the vehicle was towed.

B. No private property owner shall authorize the towing of any motor vehicle parked for an authorized purpose or during a time at which such parking is not permitted from the private property owner's property without the consent of the motor vehicle owner or operator, unless:

(1) The private property owner has contracted with a private property towing company for removal of vehicles parked on the property without authorization; and

(2) A sign that conforms to the requirements of Subsection A (2) of this section is posted on the property.

C. This section shall not apply to a motor vehicle parked on a lot or parcel on which is situated a single-family unit or an owner-occupied multi-unit structure of not more than six units or in front of any driveway or garage entrance where the motor vehicle is blocking access to that driveway or garage entrance.

D. Exemption from certain signage requirements.

(1) The requirements of Subsection A (2) of this section shall not apply to a residential community in which parking spaces are specifically assigned to community residents, provided that:

(a) The assigned spaces are clearly marked as such;

(b) There is specific documented approval by the property owner authorizing the removal of the particular vehicle; and

(c) A sign, which can easily be seen by the public, is posted in a conspicuous place at all vehicular entrances to the residential community property, stating that unauthorized parking in an assigned space is prohibited and unauthorized motor vehicles will be towed at the owner's expense, and providing information or a telephone number enabling the vehicle owner or operator to immediately obtain information as to the location of the towed vehicle.

(2) The exemption in this subsection shall not apply to any private parking lot or parcel owned or assigned to a commercial or other non-residential entity located in such residential communities.

§223-14. Rates and Fees for Services.

A. When performing services under the tow list to tow and/or store a motor vehicle, the towing charge and storage charge shall not exceed those charges as set forth in this chapter. These are maximum fees that may be charged.

B. The fee schedule effective at the time of adoption of this chapter is as follows:

(1) Towing.

(a) Days:

1. First mile or less; light/medium duty, \$95.00; heavy duty, \$450.00 (per hour) (payable in fifteen minute increments).
2. Each additional mile: \$5.00.

(b) Nights, weekends and New Jersey state holidays:

1. First mile or less: light/medium duty, \$95.00; heavy duty, \$450.00 (per hour)(payable in fifteen minute increments).
2. Each additional mile: \$5.00.

(2) Storage.

(a) Inside building.

[1] Per vehicle/per day:

light/medium \$45.00; heavy
duty, \$100.

(b) Outside secured.

[1] Per vehicle/per day: light/medium, \$30.00; heavy duty, \$75.00.

(3) Additional fees.

(a) Cleanup: \$40 (per hour).

(b) Oil dry: \$15 (per bag).

(c) Administrative fee. \$35.00.

(d) Winching fee, basic; \$75.00.

(e) Heavy duty laborer; \$75.00 (per man per hour).

(f) Heavy duty support vehicle; \$130.00 (per hour).

C. The fees set forth on the schedules for towing rates are the maximum charges that shall apply to a motor vehicle for basic towing services.

- D. The towing rates shall be calculated based on the total distance traveled from the tow vehicle's base of service to the job site and return by way of the shortest available route. Fractions shall be rounded up to the nearest whole mile.
- E. Tow vehicles transporting multiple motor vehicles at one time may charge the applicable fee for each such vehicle transported.
- F. When towing services are otherwise required, the day rate shall apply when the vehicle is transported (pickup and delivery) entirely between the hours of 8:00 a.m. and 5:00p.m., Monday through Friday, except New Jersey state holidays. The night, weekend and holiday rate shall otherwise apply.
- G. The Borough Clerk shall post fees, available to the public, during normal business hours along with a copy of this chapter and the fee schedules of licensed towing operators.
- H. Payment from the public shall include credit cards.

§223-15. Miscellaneous.

- A. The Zoning Official shall be responsible for the enforcement of the provisions of this chapter.
- B. Motor vehicles which remain unclaimed by the owner or other person having legal right thereto shall be disposed of pursuant to the applicable provisions of Title 39 of the New Jersey Statutes. The last known owner of an abandoned vehicle shall be responsible for all towing fees or charges, storage fees or charges, road service fees or charges, and any other fees permitted by law.
- C. The Borough shall make periodic inspections of facilities, equipment and service and, upon request, shall be provided full access to equipment or property. Such inspections shall be made quarterly, semiannually, or annually, as determined by the applicable Zoning official, but in no case shall such inspections be made less than annually.
- D.. The Township of Franklin Police Department shall have the right to store at its own facilities motor vehicles towed at its direction or confiscated in suspected crimes. All licensed towing operators shall extend storage to the Township of Franklin Police Department at no cost and, if so requested, shall provide separate storage space for exclusive use of the Township of Franklin Police Department also at no cost. Abandoned vehicles or vehicles confiscated by the Township of Franklin Police Department are to be stored as authorized by the Township of Franklin Police Department to assure protection of the vehicle and to provide security of said vehicle until appropriately disposed of by the Township of Franklin Police Department.
- E. Towing operators shall not pile vehicles or park towed vehicles on public streets or sidewalks.
- F. Pursuant to the Spill Compensation and Control Act, including N.J.S.A. 58:10-23.11 (g), any person in any way responsible for a discharge of petroleum or hazardous substances shall be strictly liable, jointly and severally, without regard to fault, for all costs of cleanup and removal of the discharge from the public right-of-way and private property within the area of the spill. The tow operator and/or facility owner shall be responsible for the cleanup and removal of any spill or discharge of petroleum or hazardous substances at its storage facility. The facility

owner may choose to take action against the vehicle owner for the cost of such cleanup and removal. The responsible party shall contact the NJDEP Action Line to report any spills or leaks as required by N.J.S.A 58:10-23.11 (e).

- G. Whenever any petroleum or hazardous substances are discharged on public property or within the public right-of-way, the Health Department may, in its discretion, act to remove or arrange for the removal of such discharge, or may direct the responsible party to remove or arrange for the removal of such discharge. The County Environmental Health Department shall monitor compliance with any cleanup directives. Pursuant to N.J.S.A. 58:10-23.11 (f), any person who fails to comply with a cleanup directive shall be liable to the Borough in an amount equal to three times the cost of such removal.

§ 223-16. Unlawful practices for towing company.

It shall be an unlawful practice for any private property towing company or for any other towing company that provides nonconsensual towing services:

(1) To give any benefit or advantage, including a pecuniary benefit, to any person for providing information about motor vehicles parked for unauthorized purposes on privately owned property or otherwise in connection with private property towing of motor vehicles parked without authorization or during a time at which such parking is not permitted.

(2) To fail, when so requested by the owner or operator of a vehicle subject to nonconsensual towing, to release a vehicle to the owner or operator that has been, or is about to be, hooked or lifted but has not actually been moved or removed from the property when the vehicle owner or operator returns to the vehicle, or to charge the owner or operator requesting release of the vehicle an unreasonable or excessive decoupling fee. Such a fee shall be presumptively unreasonable and excessive if it exceeds by more than 25%, or a different percentage established by the Director by regulation, the usual and customary decoupling fee charged by the towing company for a vehicle subject to consensual towing, or if it exceeds by more than 50%, or a different percentage established by the Director by regulation, the usual and customary decoupling fee charged for vehicles subject to nonconsensual towing by other private property towing companies operating in the municipality in which the vehicle was subjected to nonconsensual towing.

(3) To charge a fee for a private property or other nonconsensual towing or related storage service not listed on the schedule of services for which a fee may be charged.

(4) To refuse to accept for payment in lieu of cash or an insurance company check for towing or storage services a debit card, charge card or credit card if the operator ordinarily accepts such card at his place of business, unless such refusal is authorized in accordance with N.J.S.A. 56:13-4.

(5) To monitor, patrol, or otherwise survey a private property for the purposes of identifying vehicles parked for unauthorized purposes and towing a motor vehicle parked for an unauthorized purpose from such private property without having been specifically requested to tow such vehicle by the owner of the property.

§ 223-17. Availability of records.

A. Every towing company that performs private property or other nonconsensual towing shall retain and make available for inspection by the Division, for a period of three years, invoices, job orders, logs, claims for reimbursement from insurance companies and other

documentation relating to all consensual and nonconsensual towing services performed and rates charged for the services.

B. The regulations set forth in this chapter shall be made available to the public at the Borough hall during normal business hours.

C. Employees of the tower are not to be deemed to represent nor be employed by the Borough, and the tower shall accept responsibility for the conduct of its employees.

D. Complaints concerning the services provided or fees charged by the tower shall be investigated by the Township of Franklin Police Department and Buena Borough, who will prepare a written report to be presented to the Borough's Public Safety Committee for such further action.

E. Towers shall disclose the rate of fees charged by, at a minimum, posting the rates in a conspicuous place at the storage area.

F. The Borough of Buena shall assume no liability for any services performed by the tower.

§ 223-18. Employees of Towing Operator.

A. The contractor shall employ a sufficient number of employees to comply with the minimum operational requirements.

B. All drivers of the contractor shall be over the age of 18 years and must have a valid, current New Jersey state driver's license and shall be in good health and of high moral character.

C. Dealing with the public. In all of its dealings with the public, the tower is expected always to act in a professional manner and at all times to be courteous and respectful toward members of the public as well as representatives of the Borough of Buena. While members of the public, especially those whose cars may have been towed or impounded, may at times resort to strong language, threats and unbecoming behavior toward the tower, the tower is expected to exercise restraint and not to respond in kind, and thereby reflect unfavorably on the Borough of Buena and/or the Township of Franklin Police Department. Reports of discourteous behavior by the tower or his employees may be considered by the Borough as sufficient cause for removal from the towing list.

§223-19. Disposal of unclaimed motor vehicles.

A. Each tow company shall be deemed to have taken possession of motor vehicles towed in accordance with this chapter, other than abandoned motor vehicles towed at the request of the Township of Franklin Chief of Police or his designee, under the provisions of N.J.S.A. 39:10A-1 and N.J.S.A 39:4-56.5

B. It shall be the responsibility of the towing company to notify the registered owner, or any other person having a legal interest therein, within 10 days of having towed said vehicle or rendered any other service thereto, of the location of the vehicle, the service rendered, the charge for such service and the time within which the motor vehicle must be collected, said period for collection not to exceed 30 days.

C. Upon the expiration of the time to collect the motor vehicle as set forth in Subsection B has expired, the towing company must either offer the vehicle for sale at public auction or cause a junk title certificate to be issued for the motor vehicle in accordance with the laws of the State of New Jersey, specifically N.J.S.A. 39:10A-8 et seq., a copy of said title to be kept by the applicant.

D. Any notification required in this chapter shall be in writing, sent by certified or registered mail, return receipt requested, to the last known address of the person to whom the notice is to be given.

E. The towing company shall be responsible to perform all searches with the New Jersey Motor Vehicle Commission or out of state motor vehicle commission to determine ownership and the last known address of the title owner to the vehicle in question. That information and proof of

searches with appropriate state agencies must be provided to the Township of Franklin Chief of Police.

F. At any time prior to the sale of the motor vehicle or the issuance of a junk title certificate therefor, the owner of the motor vehicle may reclaim possession of the motor vehicle from the towing company upon payment of the towing services as set forth herein and the expense of storage of the motor vehicle.

Section 2. INCONSISTENT ORDINANCES REPEALED. All ordinances and parts of this Ordinance in conflict with this ordinance are hereby repealed.

Section 3. INVALIDITY If any section, sentence or any part or parts of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remainder of the Ordinance, but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the controversy in which judgment shall have been rendered.

Section 4. EFFECTIVE DATE. This Ordinance shall take effect immediately upon passage and publication.

NOTICE IS HEREBY GIVEN that the foregoing Ordinance was introduced and passed at first reading at a meeting of Borough Council of the Borough of Buena, County of Atlantic and State of New Jersey held on May 23, 2022, and said Ordinance will be further considered for final passage and adoption at a public hearing to be held at Borough Hall located at 616 Central Avenue Minotola, New Jersey, on June 13, 2022 at 7:00 p.m. or as soon thereafter as the matter may be reached.

ATTEST:

By: _____
Borough of Buena- Acting Clerk
PAMELA JOHNSTON

By: _____
Council President
MATTHEW WALKER, SR.

APPROVED on this _____ day of _____ 2022, by the Mayor of the Borough of Buena.

ATTEST:

By: _____
Borough of Buena- Acting Clerk
PAMELA JOHNSTON

By: _____
Mayor
DAVID ZAPPARIELLO