



## **BOROUGH OF FLORHAM PARK**

### **ORDINANCE # 21-16**

#### **AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF FLORHAM PARK IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, REPEALING AND REPLACING CHAPTER 228 OF THE CODE OF THE BOROUGH OF FLORHAM PARK, ENTITLED, "TOWING/WRECKER OPERATORS"**

**WHEREAS**, municipalities are expressly authorized to enact, amend and repeal ordinances managing and regulating the towing and removal of vehicles from private and public property within the municipality; and

**WHEREAS**, upon recommendation of the Chief of Police, the Mayor and Council have deemed it appropriate to repeal and replace Chapter 228 of the Code of the Borough of Florham Park to properly regulate the towing and storage of vehicles within the Borough.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Florham Park, in the County of Morris, State of New Jersey as follows:

**Section 1.** Chapter 228, "Towing/Wrecker Operators", of the Code of the Borough of Florham Park is hereby repealed and replaced in its entirety as follows:

#### **§ 228-1 Purpose.**

The purpose and intent of this chapter is to provide criteria, qualifications, standards and uniform operating procedures that are reasonable, non-exclusionary and non-discriminatory in the selection and use of approved towing operators, on a rotational basis, for police requested towing and storage services. It is the further purpose of this chapter to regulate these services from both a public safety perspective that would result in the quickest response time in good and bad weather, thereby minimizing waiting time for police officers on scene, the removal of vehicles from the roadway and the distance of

travel for the recovery of vehicles by persons towed, and from an administrative perspective to ensure compliance with the requirements and specifications of this chapter.

**§ 228-2 Definitions.**

**LICENSE**

The document approved and issued by the Borough of Florham Park granting the privilege to tow and store vehicles and perform other towing operations for the Borough of Florham Park during the Licensing Term.

**LICENSEE**

A towing operator having a license granted by the Borough pursuant to the provisions of this Chapter.

**ROTATION LIST**

A revolving list of prepared by the Chief of Police by which each licensed towing operator shall be periodically designated for a specific increment of time as the primary towing operator to be called by the police department for towing services.

**SECURE STORAGE FACILITY**

A storage facility used exclusively by the licensee that is either completely inside a locked building or outside in a completely enclosed area with a fence, wall or other man-made barrier that is at least six (6) feet in height, with at least one entrance and exit gate and is completely illuminated to safeguard the vehicles stored in that location.

**TOWING OPERATOR**

An individual or entity engaged in the business of providing towing and storage services.

**STORAGE FACILITY**

A location registered with the State of New Jersey and expressly approved by the Borough to be used by the licensee for the storage of vehicles towed or impounded by the towing operator that is located within either the Borough of Florham Park, Borough of Chatham, Borough of Madison, Town of Morristown, Township of East Hanover, Township of Hanover or Township of Morris.

**§ 228-3 License required; number of licenses issued.**

A. No towing operator shall operate within the Borough of Florham Park for police-requested towing services and/or storage services unless the towing operator has obtained a license issued by the Borough of Florham Park.

- B. There shall be no limitation on the number of licenses issued and in effect at one time, provided that each licensee meets the requirements of this Chapter.
- C. The application for a license under this Chapter shall be made in writing on the form required by the Borough and made available through the Office of the Borough Clerk and shall contain all information required and necessary to evidence the applicant's identity and legal address, compliance with the requirements of this Chapter and ability to perform the towing and storage services contemplated by this Chapter. If a partnership, corporation, LLC or any other entity, the application shall set forth the names and addresses of all officers, trustees, directors, together with the names, addresses, social security numbers and dates of birth of all persons holding more than a 10% interest. The application shall also contain the names of all tow truck drivers, his or her address, dates of birth, social security numbers and driver's license numbers.
- D. Upon commencement of the license term, the Chief of Police shall establish a towing operators rotation list. Such rotation list will be set at equal increments, as determined by the Chief of Police, so as to ensure each licensed towing operator shall be periodically designated for a specific and equal increment of time to serve as the primary towing operator to be requested to respond to police-initiated requests for towing and storage services. The licensee designated as the primary towing operator pursuant to the rotation list at any given time shall be responsible for promptly responding to requests by the Borough Police Department on a twenty-four (24) hour basis. Upon receipt of a request from the Borough Police Department, the licensee shall respond and be present at the towing location within twenty (20) minutes of the time of the request, provided that the response time shall be reasonably adjusted to take into account circumstances beyond the control of the licensee, including, but not limited to, traffic volume, environmental factors, weather conditions and other factors, in which case the response time may be reasonably extended and the licensee excused from strict compliance for a time equivalent to that which was beyond the control of the licensee. Notwithstanding any excusal of the responsibility of the licensee, the Borough Police Department shall be permitted to request a response by the next available licensee on the rotation list in the event the primary towing operator fails to respond within the required time or if the primary towing operator cannot be reached or otherwise unable to respond. The failure to substantially comply with the response times set forth under this Chapter, except that where the failure or delay is reasonably excused, shall serve as grounds for the potential suspension, revocation or denial of a license.

**§ 228-4 Exceptions to license requirement.**

- A. Owner requested service. No license shall be required for the on-site repair and/or towing or storage of any vehicle when the request therefor is received by the towing operator from the owner or the owner's agent prior to a police request therefor.

- B. Towing from private property. No license shall be required by the police to tow any vehicle from private property without the consent of the owner and private property owner except on the express instruction of the police in the event of an emergency.

**§ 228-5 Issuance of license; term; insurance; storage.**

- A. All applications for a license shall be filed with the Borough Clerk by no later than December 1 of the year prior to the year of the license term commencing January 1.
- B. The Borough Clerk will forward all qualified applications (a completed application with applicant fee paid) to the Chief of Police within five days of receipt. The Chief of Police will conduct, or cause to be conducted, an investigation and inspection of each application to determine the truth and accuracy of the information contained in said application, background check, adequacy of facilities and equipment, compliance with all applicable State laws and regulations, ability to perform the towing services and storage services contemplated by this Chapter and such other pertinent matters related to licensing and as may be necessary to fully and thoroughly evaluate and determine the applicant's compliance with, and ability to continue to comply with this Chapter. Upon concluding his review, the Chief of Police will return a copy of the application to the Borough Clerk, along with his recommendation for approval or disapproval of a license, and the reasons, if any, for disapproval. The Borough Clerk shall issue a tow operator license to each qualified applicant, and thereafter, the licensee's name shall be placed on the Florham Park Police Department licensed tow operator's list. The Clerk shall forward to any person rejected for a license, a copy of his application with the reasons for disapproval noted thereon. There shall be no refund of application fees.
- C. Each license issued pursuant to this Chapter shall be for a term of three (3) years, commencing January 1 and expiring December 31 of the third year. The license shall list the name of the tow operator business and each employee licensed thereunder.
- D. Each licensee shall be required to maintain, in full force and effect during the term of its license, insurance coverages of the types and amounts set forth in § 228-10 and shall submit such certificates and proofs as provided therein to the Borough Clerk at the time of the filing of the license application.
- E. In the event of any revocation or termination of a license for failure to comply with this chapter, no refund shall be given, and payment of another initial application fee shall be required upon applying for reinstatement.
- F. All licensees shall be required to store vehicles which are towed or impounded at an approved storage facility as defined in this Chapter located within either the Borough of Florham Park, Borough of Chatham, Borough of Madison, Town of Morristown, Township of East Hanover, Township of Hanover or Township of Morris. The proximity of the aforementioned municipalities to the Borough of Florham Park will serve to reduce the distance owners must travel to retrieve their vehicles, render all

such vehicles readily accessible to the Florham Park Police Department and facilitate the prompt removal of vehicles and quicker response times.

- G. Licensees shall be familiar with the rules and regulations of the Predatory Towing Prevention Act (N.J.S.A. 56:13-1, et seq.) and be aware that any violations of these requirements may result in the suspension, revocation or denial of a license.
- H. Licensee shall maintain a twenty-four-hour phone number which is manned by the licensee's personnel. Such personnel must have constant two-way communication, radio or cellular, with the licensee's vehicles. Phone calls may be forwarded from the principal business location to a residence during nighttime hours as long as two-way communication can be maintained with licensee's vehicles.

**§ 228-6 Application fee.**

All application fees submitted to the Borough are nonrefundable and shall be utilized to offset the cost of processing of the application and license.

**Type Fee**

Initial application fee	\$500
Renewal application fee	\$250

**§ 228-7 Investigation and inspection.**

- A. The Police Department of the Borough of Florham Park will conduct a thorough background check of the licensee, its officers, principals, and employees prior to granting a license. Applicants and licensees shall cooperate with any and all investigations conducted by the Borough Chief of Police or his designee or other law enforcement agency working in conjunction with the Borough police. The requirement of cooperation shall continue throughout the period of application, and the duration of the license and the storage of vehicles (even if a license is no longer in effect).
- B. No applicant will be granted a license unless found to be in compliance with this Chapter and all applicable State laws and regulations. A license may be denied, suspended or revoked for fraud, misrepresentation or false statement in the licensing or application process, in the course of conducting the towing operation, for violation of this Chapter, or for the criminal conviction of the applicant, its officers or a person or entity holding a 10% or larger interest in the applicant, within the last seven (7) years for any indictable offense involving stolen or embezzled vehicles, fraud relating to the towing business, stolen property, or any other offense of a similar nature. Each prospective licensee shall furnish, with its application, executed background check waivers for all officers, principals and employees, in the form provided by the Chief of Police.

- C. Each licensee shall submit the names of all employees newly hired during the term of the license for a background check which may be performed by the Borough Police Department prior to such individual's performing any services as described in this Chapter. The license shall be subject to termination for failure to submit employees to such a background check. All tow operators must have an appropriate, valid New Jersey driver's license, with the appropriate class and endorsement(s) for the vehicle being operated. Tow operators shall, at all times, behave in a professional and courteous manner when dealing with the public and members of the police department.
- D. The Borough Police Chief or his designee shall conduct such on-site inspections of the premises, equipment, vehicles and storage facilities of applicants and licenses as appropriate to evaluate compliance with the provisions of this Chapter.
- E. All towing and storage facilities used by the licensee shall meet or exceed the requirements and conditions of this Chapter and expressly identified and approved by the Borough in the application and issuance of a license.
  - 1. All storage facilities shall be used and accessible exclusively by the licensee and either located completely inside a locked and secured building or outside in an area completely enclosed by a sturdy fence, wall or other man-made barrier at least six (6) feet in height, with at least one entrance and exit gate, that is completely illuminated and sufficient to protect and safeguard the vehicles stored in that location.
  - 2. No unsecured storage facility of any kind will be permitted for use by the licensee for storage of any vehicle towed or impounded by the licensee.
  - 3. The hours of recovery of vehicles from storage shall be no less than Monday through Friday, 8:00 a.m. to 6:00 p.m., and Saturday or Sunday, 9:00 a.m. to 3:00 p.m., and prominently posted at all of the above-mentioned facilities of the licensee and also made available at Borough Police Department. The vehicle shall be made available by the licensee immediately upon an emergency request by the Borough Police Department. Licensees shall further be obligated to make reasonable accommodations for after-hours release of stored vehicles.
  - 4. The contact information and hours of operation for vehicle release shall be posted and clearly visibly at each storage facility.

**§ 228-8 Suspension and revocation of license.**

The Borough shall have the right to suspend, revoke and/or deny the issuance of a license for good cause upon the determination of the Chief of Police of a violation or failure to comply with the requirements of this Chapter by the licensee.

Prior to the suspension, revocation or denial of the license, the Borough shall notify the applicant or licensee in writing as to the basis of the violation or noncompliance with the requirements of the license and of the opportunity to request a hearing before the Borough Administrator. Such request must be made in writing and served on the Borough Clerk no later than ten (10) days of receipt of the notification of suspension, revocation or denial. A hearing, if requested, will be scheduled by the Borough Administrator within thirty (30) days of the date of the request, unless otherwise agreed.

**§ 228-9 Rules and regulations; rates.**

- A. The New Jersey State Police Application and Minimal Requirements for Vehicular Towing (hereinafter “NJ State Police Rules”) are, to the extent not inconsistent with this Chapter, hereby adopted by the Borough as constituting the rules and regulations of the Borough as to the licensing and operational requirements for towing operators conducting business in the Borough, except that where such NJ State Police Rules refer to the New Jersey State Police, they shall be read to refer to the Florham Park Police Department, and where the NJ State Police Rules refer to the Station Commander, the Chief of Police shall be substituted therefor. Such Rules shall be available for public inspection at the offices of the Borough Clerk and Chief of Police.
- B. Rates. The Borough hereby adopts the maximum rates allowed for towing and storage by licensees established by the New Jersey State Police. Such rate schedule shall be available for public inspection at the offices of the Borough Clerk and Chief of Police.

**§ 228-10. Indemnification and insurance.**

- A. All applications for a towing operator license under this Chapter shall include an agreement by the towing operator that, upon issuance of a license, the licensee shall indemnify, defend and hold harmless the Borough, its elected and appointed officials, officers, employees, insurers, attorneys, agents, servants, successors, assigns, designees, guests and invitees, from and against any and all liability, claims, losses, damages, costs and expenses, including reasonable attorney’s fees and costs, arising or alleged to arise from any action of the tow operator relating to the performance of any towing, storage or other service requested or rendered by the licensee.
- B. Each licensee shall secure and maintain, in full force and effect for the duration of the license term the insurance policies and coverages of the kinds and amounts hereinafter provided, from insurance companies licensed to do business in the State of New Jersey and having an A.M. Best Rating of “A-” Class “VII” or better as follows:
  - 1. Garage keeper’s liability insurance covering each storage facility and each location, including for fire, theft and explosion, in the minimum amount of one million dollars (\$1,000,000) combined single limit.

2. Automobile liability insurance covering the licensee and every tow truck operator for claims arising from owned, hired and non-owned vehicles with limits of not less than one million dollars (\$1,000,000) any one person and two million dollars (\$2,000,000) any one accident for bodily injury and five hundred thousand dollars (\$500,000) each accident for property damage.
3. Workers' compensation and employer's liability insurance for all employees in the minimum amounts required by law.
4. Endorsements providing for collision coverage for vehicles in tow.
5. The applicant shall file with the license application to the Borough certificates of insurance and endorsement evidencing the coverage provided by said policies and naming the Borough of Florham Park, Mayor and Council of the Borough of Florham Park, Borough of Florham Park Police Department and its elected and appointed officials, officers, employees, insurers, attorneys, agents, servants, successors, assigns, designees, guests and invitees" as an additional insured on a Primary and non-contributory basis under the policy. All such certificates of insurance and insurance binders shall expressly provide that the coverage afforded thereunder shall not be canceled, terminated or materially changed without at least twenty (20) days advance written notice to the Borough.

**§ 228-11. Violations and penalties.**

Any person or entity who shall be found to have violated any section of this chapter, or to have submitted a false or misleading application, shall, in addition to any other penalties authorized by law, be subject to removal from the tow operators list and/or revocation of their license.

**Section 4.** Repealer. All ordinances or parts of ordinances contrary to or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

**Section 5.** Severability. Each section, subsection, paragraph, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase. If any portion of this Ordinance, or its application to any person or circumstances, shall be adjudged or otherwise determined to be invalid, unconstitutional, preempted, void, or ineffective for any clause or reason, such determination shall not affect the remaining provisions of this Ordinance, and the application of such remaining provisions shall not be affected thereby and shall remain in full force and effect, and to this end, the provisions of this Ordinance are severable.

**Section 6.** Effective Date. This Ordinance shall take effect immediately upon final passage and publication according to law.

**Section 7.** Prior actions. All actions of the Borough of Florham Park taken prior to the date of adoption hereof contemplated by this Ordinance are hereby ratified and approved.

**Section 8.** Codification. This Ordinance may be renumbered for codification purposes.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Florham Park introduced on July 15, 2021 and will be further considered for adoption after Public Hearing held on August 19, 2021 at 6:30 pm in the Borough of Florham Park Municipal Building, 111 Ridgedale Avenue, Florham Park, New Jersey.

INTRODUCED: July 15, 2021

ADOPTED: August 19, 2021

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Mark Taylor, Mayor

ATTEST:

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Maryann C. Lang, Deputy Borough Clerk